

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife

November 17, 2006

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

**SUBJECT: KA'Ū PRESERVE: REQUEST FOR ENROLLMENT IN THE
NATURAL AREA PARTNERSHIP PROGRAM, APPROVAL
OF THE LONG-RANGE MANAGEMENT PLAN,
AUTHORIZATION OF FUNDING, AND CONSERVATION
DISTRICT USE APPROVAL FOR ACTIVITIES IDENTIFIED IN
THE LONG-RANGE MANAGEMENT PLAN**

SUMMARY:

This submittal requests the Board to approve the enrollment of the Ka'ū Preserve into the Natural Area Partnership program, approve the Long-Range Management Plan for Fiscal Years 2007-2012, authorize the matching funding for the management of Ka'ū Preserve as outlined in the Long-Range Management Plan for Fiscal Years 2007-2012, grant conservation district use approval for activities identified in the Long-Range Management Plan for Fiscal Years 2007-2012, and authorize the Chairperson to negotiate and sign a Partnership Agreement with The Nature Conservancy to this effect.

The Natural Area Partnership (NAPP) program was established to encourage active conservation on private lands of natural area reserve quality. The proposed Ka'ū Preserve will be the first NAPP Preserve on the island of Hawai'i in an area of important habitat for native plants and animals. The Division of Forestry and Wildlife recommends the inclusion of Ka'ū Preserve in the NAPP program.

BACKGROUND:

The State's NAPP program was established in 1991 and provides matching funds (\$2 State to \$1 private) for the management of qualified private lands that have been permanently dedicated to conservation (Hawai'i Revised Statutes (HRS) § 195-6.5). Statewide, there are seven preserves enrolled in the program, with three on Moloka'i, three on Maui, and one on Lāna'i.

Ka'ū Preserve, located on southeast flank of Mauna Loa on the island of Hawai'i, was purchased

by The Nature Conservancy in 2002 from Mauna Kea Agribusiness Co., Inc., to protect portions of one of the most biologically rich and intact forests on the island of Hawai'i. Ka'ū Preserve (TMK (9-7-001-002; 9-7-001-003; 9-7-001-004 (portion); 9-7-001-007) includes 3,511 acres, more or less, and is located partially in the State Agricultural District and partially in the State Conservation District, Protective and Resource subzones. A map showing the Ka'ū Preserve is included as Exhibit A of the Attached Partnership Agreement.

PROPOSED USE

The Long-Range Management Plan for Fiscal Years 2007-2012 (LRMP); (attached as Exhibit C within the attached Partnership Agreement) provides a more detailed description of the natural resources protected in Ka'ū Preserve and the management activities planned over the next six years. In brief, the Preserve includes four separate units (Kāhilipali, Kī'olokū, Kaiholena, and Keaīwa)

spanning 12 miles and ranging from 2,000-5,700 feet in elevation. It is adjacent to the State's Ka'ū Forest Reserve and is positioned within one of the largest areas of intact forest land in the State, totaling 68,500 acres. Ka'ū Preserve contains four natural community types, ranging from lowland wet forests to montane mesic (moist) forests, including one rare natural community: the Koa/Ōhi'a Montane Mesic Forest. The mesic and wet forests of the Ka'ū region are home to at least 12 known species of rare plants. Six of these are endangered, two are candidates for listing as endangered, three are species of concern, and one has a restricted range. One of the richest assemblages of endangered forest birds (*e.g.*, Hawai'i Creeper, Hawai'i 'Ākepa, 'Akiapōlā'au, 'Io) inhabit the largely intact forests of Ka'ū. Many of these forest birds, including the 'Io, the Hawai'i 'Ākepa, and the 'Alalā have been historically found within Ka'ū Preserve but now are probably extirpated. Other rare birds likely still occur in the Preserve, but surveys are needed for confirmation.

Proposed management over the next six years will focus on ungulate control, invasive plant control, resource monitoring, rare species protection and enhancement, community outreach, and watershed partnership. The management emphasis will be on removing ungulates through fencing, trapping, and encouraging public hunting in unfenced areas and on removal of habitat-modifying weeds. Staff from The Nature Conservancy will be responsible for implementing the Long-Range Management Plan.

The total NAPP budget for Fiscal Years 2007-2012 is \$1,037,520. Total State funding requested over the next six years would be \$691,680; The Nature Conservancy will provide the match over the next six years of \$345,840. In addition, TNC has successfully leveraged this State and private funding to secure Federal funding to provide additional funding for identified conservation needs.

The FY07-12 LRMP was reviewed by Division of Forestry and Wildlife staff and presented to the Natural Area Reserves Commission on April 3, 2006. The Commission unanimously voted to support the inclusion of Ka'ū Preserve in the NAPP program and approve the FY07-12 LRMP for forwarding to the Board for action, subject to successful completion of the environmental review process.

Although Natural Area Partnership agreements are made in perpetuity, funding is authorized on a six-year basis to allow for regular periodic State and public review. Thus, the Division will return to the Board no later than the end of Fiscal Year 2012 to update the Board on the progress at Ka'ū Preserve, to present an updated Long-Range Management Plan with an updated budget, and to request continued funding.

PROCEDURAL BACKGROUND:

The Nature Conservancy submitted a pre-proposal to the Department for participation of the Ka'ū Preserve in the NAPP program and presented it to the Natural Area Reserves Commission at its January 12, 2004 meeting. After Department approval of the pre-proposal, The Nature Conservancy developed a Draft Long-Range Management Plan, which was reviewed by Division of Forestry and Wildlife staff and by the Natural Area Reserves Commission. While the Draft Long-Range Management Plan was under development, DOFAW notified the Office of Conservation and Coastal Lands that it intended to administer the Conservation District Use process for this project pursuant to a memo from former Chair Gilbert Coloma-Agaran to the Divisions regarding Division compliance with Chapter 183C and received their concurrence.

Once the Long-Range Management Plan was complete, The Nature Conservancy prepared an Environmental Assessment covering the activities identified in the Long-Range Management Plan and submitted a Conservation District Use application. The Draft EA was made available for public comment on May 8, 2006. DOFAW held a public hearing on this proposed use of the conservation district on June 15, 2006 at the Pahala Community Center, for which legal notice was published in the Honolulu Star Bulletin, West Hawaii Today, and the Hawaii Tribune Herald on May 26, 2006. Three members of the public attended the public hearing; two provided informal comments in support of the project.

After reviewing the public comments received during the environmental review process and additional discussion with DOFAW staff, The Nature Conservancy slightly revised the Long-Range Management Plan to reflect a different fencing alignment and submitted a Final Environmental Assessment. The Final EA and Finding of No Significant Impact (FONSI) was published on September 23, 2006.

DISCUSSION AND ANALYSIS:

I. Enrollment as a new NAPP preserve

The NAPP Program seeks to protect, restore, or enhance significant native resources of the State by providing funding for private landowners to conduct long-term conservation management over private lands of natural area reserve quality. In order to qualify under this program, an applicant shall be a landowner or a cooperating entity of private land of natural area reserve quality and shall agree to (1) dedicate the private land in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity; (2) have the private land managed by the cooperating entity or qualified landowner according to a management plan prepared by the

cooperating entity or landowner and approved by the board that meets the standards established by the department for the system; (3) a penalty payback provision in the event the landowner or cooperating entity ceases to implement the approved management plan, unless the board approved modifications to the plan or state funding is terminated; (4) submit an annual report detailing the year's management accomplishments, areas needing technical advice, proposed modifications to the plan, and objectives and budget for the coming year; and (5) any other conditions the department shall require by rule.

As discussed above, Ka'ū Preserve contains important natural resources and is considered to be of natural area reserve quality. It is private land that has been dedicated in perpetuity through transfer of fee title to The Nature Conservancy, a non-profit organization committed the preservation of biotic diversity and a recognized "cooperating entity" under the Natural Area Partnership Program for seven NAPP preserves. A copy of the deed is included as Exhibit B of the attached Partnership Agreement. The Nature Conservancy proposes to manage the land according to the Long-Range Management Plan submitted for approval, included as Exhibit C to the attached Partnership Agreement. The Management Plan submitted for Ka'ū is consistent with, and similar to, the management plans previously approved by the Board for other NAPP Preserves. The attached Partnership Agreement contains a penalty payback provision, outlines reporting requirements, including both a progress and annual report, and contains other conditions required by HAR Chapter 13-210 (Rules Regulating Application, Approval, and Administration of the Natural Area Partnership Program).

Although the Natural Area Partnership agreements are made in perpetuity, funding is authorized in six-year increments, for the entire term of its approved management plan. Approval of funding to implement the conservation actions proposed in the FY07-12 LRMP would demonstrate the State's strong support and recognition of the importance of long-term natural resources management and demonstrate the program's potential. In addition, the creation of the first NAPP Preserve on the island of Hawai'i could encourage other private landowners owning property with significant natural resources to apply for participation in the program.

Based on the quality of the natural resources protected in Ka'ū Preserve, the importance of Ka'ū Preserve as part of the regional conservation efforts in the Ka'ū area of the island of Hawai'i, the leadership and effectiveness of past management actions by staff of The Nature Conservancy in other areas of the State, and the reasonableness of the proposed budget, staff recommends the inclusion of Ka'ū Preserve in the NAPP program, approval of the Long Range Management Plan for Fiscal Years 2007 – 2012, and authorization of funding in the amounts requested through approval of the attached Partnership Agreement.

II. Conservation District Use Approval

Ka'ū Preserve contains land in the Agricultural District and land in the Conservation District (Resource and Protective Subzones). The objective of the Protective subzone of the Conservation District is to protect resources in such designated areas as natural area reserves, important watersheds, or plant and wildlife sanctuaries. The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of

those areas. The proposed use of conservation management as described within the Ka'ū Preserve FY07-12 LRMP is an identified use within the Protective and Resource subzones of the Conservation District according to HAR § 13-5-22 (P-7 Sanctuaries and P-6 Public Purpose Use).

As discussed earlier, a Draft Environmental Assessment (EA) was prepared in conformance with Chapter 343 and the requirements of HAR Chapter 13-210 and a public hearing was held on June 15, 2006.

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR § 13-5-30.

1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through the appropriate management and use to promote their long-term sustainability and the public health, safety and welfare. The proposed activities outlined in the Long-Range Management Plan have the purpose of conserving, protecting and preserving the natural resources found within Ka'ū Preserve, and as such, are consistent with the objectives of the Conservation District.

2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Protective Subzone is to protect valuable resources in designated areas such as restricted watersheds, marine, plant and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas, particularly, lands and waters necessary for protecting watersheds, water sources, and water supplies; and areas necessary for preserving natural ecosystems of native plants, fish and wildlife, particularly those which are endangered. The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

The proposed activities outlined in the Long-Range Management Plan have the purpose of conserving, protecting and preserving the natural resources found within Ka'ū Preserve, and as such, are consistent with the objectives of the Protective and Resource subzones.

3) *The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.*

The project area does not fall within a Coastal Zone Management Area or a Special Management Area.

4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

As stated previously, the proposed activities outlined in the Ka'ū Preserve Long-Range Management Plan will enhance and protect existing natural resources by active conservation management and by encouraging an appreciation for Hawai'i's natural resources through community outreach.

- 5) *The proposed land use, including buildings, structures or facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical condition of capabilities of the specific parcel or parcels.*

Conservation fencing to be constructed is a typical hog wire fence similar to those used in other conservation areas for ecosystem protection. A back-country camp consisting of two canvas tent cabins is being proposed to facilitate management such as overnight surveys, monitoring, fence construction and maintenance, and control of invasives and for use by hunters participating in animal control activities. The back-country camp is designed for low-impact and is similar to that used in other sensitive remote areas.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The proposed activities outlined in the Long-Range Management Plan have the purpose of conserving, protecting and preserving the natural resources found within Ka'ū Preserve, thus preserving or improving the existing physical and environmental aspects of the land.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.*

There will be no subdivision of parcels involved in this project.

- 8) *The proposed land use will not be materially detrimental to the public health, safety, and welfare.*

The project will not be detrimental to public health, safety and welfare. In addition, the project will provide protection and enhancement of endangered species as mandated by both Federal and State Endangered Species Acts, thus positively contributing to public welfare.

RECOMMENDATION:

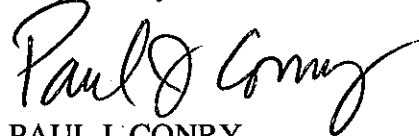
Based on the quality of the natural resources protected in Ka'ū Preserve, the importance of Ka'ū Preserve as part of the regional conservation efforts in the Ka'ū area of the island of Hawai'i, the leadership and effectiveness of past management actions by staff of The Nature Conservancy in other areas of the State, and the reasonableness of the proposed budget, staff recommends that the Board of Land and Natural Resources:

1. approve the enrollment of the Ka'ū Preserve into the Natural Area Partnership

program;

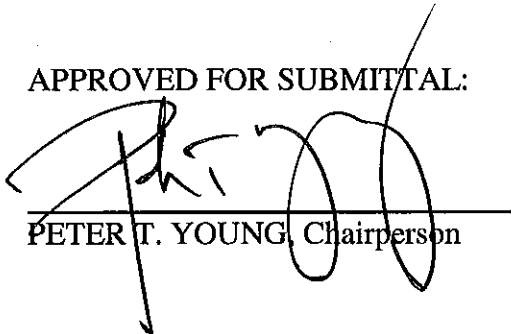
2. approve the Ka'ū Preserve Long-Range Management Plan submitted for Fiscal Years 2007-2012;
3. authorize the matching funding for the management of Ka'ū Preserve for the six-year period as outlined in the Long-Range Management Plan for Fiscal Years 2007-2012;
4. grant approval for activities identified in the Long-Range Management Plan for Fiscal Years 2007-2012 as a permitted use within the Conservation District; and
5. authorize the Chairperson to negotiate and sign a Partnership Agreement with The Nature Conservancy, subject to approval as to form by the Attorney General's office.

Respectfully submitted,



PAUL J. CONRY
Administrator

APPROVED FOR SUBMITTAL:


PETER T. YOUNG, Chairperson

Attachment: Ka'ū Preserve Partnership Agreement

**STATE OF HAWAII
NATURAL AREA PARTNERSHIP MANAGEMENT AGREEMENT**

This Agreement, effective the _____ day of _____, 2006, is entered into between the DEPARTMENT OF LAND AND NATURAL RESOURCES, State of Hawaii (hereinafter "State"), by its Chairperson of the Board of Land and Natural Resources (hereinafter "Chair"), and THE NATURE CONSERVANCY (hereinafter "MANAGING PARTNER"), a District of Columbia non-profit corporation, whose business address in Hawaii is as follows: 923 Nuuanu Avenue, Honolulu, Hawaii, 96817.

RECITALS

- A. The STATE and MANAGING PARTNER desire to provide for the management of private lands for conservation purposes under the auspices of the NATURAL AREA PARTNERSHIP PROGRAM.
- B. The management work to be performed by MANAGING PARTNER is unique, specialized, and does not admit of competitive bidding.
- C. Due to the MANAGING PARTNER'S special expertise and experience, the MANAGING PARTNER is uniquely qualified to perform the services contemplated by this AGREEMENT.
- D. The STATE and the MANAGING PARTNER have agreed that the MANAGING PARTNER shall perform these services. The STATE has agreed to fund 2/3 of the cost and the MANAGING PARTNER has agreed to fund 1/3 of the cost of these services as provided in this AGREEMENT.
- E. Pursuant to HRS 195-6.5 NATURAL AREA PARTNERSHIP PROGRAM, codified from the NATURAL AREA PARTNERSHIP PROGRAM ACT (ACT 326, signed July 1991), the Legislature has appropriated money to provide state funds on a two-for-one basis with private funds for the management of private lands that are dedicated to conservation.
- F. Pursuant to the NATURAL AREA PARTNERSHIP PROGRAM, the STATE is authorized to enter into this AGREEMENT.
- G. The MANAGING PARTNER, the Nature Conservancy, a non-profit corporation committed to the preservation of biotic diversity, holds the fee title to certain real property on the Island of Hawaii in the County of Hawaii, State of Hawaii, known as the Kau Preserve, consisting of 3,511 acres, more or less, identified as Tax Map Key Parcels (3) 9-7-001-002 (169 acres), (3) 9-7-001-003 (211 acres), (3) 9-7-001-004 (2,620 acres), and (3) 9-7-001-007 (511 acres), and shown generally on the map attached to this AGREEMENT as Exhibit A (the "PRESERVE").

- H. The parties have identified the PRESERVE as a priority for conservation management under the NATURAL AREA PARTNERSHIP PROGRAM.
- I. The MANAGING PARTNER has dedicated the PRESERVE to conservation purposes and is a COOPERATING ENTITY under the NATURAL AREA PARTNERSHIP PROGRAM. A copy of a recorded deed is attached as Exhibit B to this AGREEMENT.
- J. The STATE and the MANAGING PARTNER have agreed on a six-year MANAGEMENT PLAN for the PRESERVE, a copy of which is attached to this AGREEMENT as Exhibit C.

NOW, THEREFORE, in consideration of the promises contained in this AGREEMENT, the STATE and MANAGING PARTNER agree as follows:

- 1. Scope of Services. The MANAGING PARTNER shall, in a proper and satisfactory manner as determined reasonably by the STATE, provide all the services set forth in Attachment 1, which is hereby made a part of this AGREEMENT.
- 2. Compensation. The MANAGING PARTNER shall be compensated for services rendered and costs incurred under this AGREEMENT according to the "Compensation and Payment Schedule" set forth in Attachment 2, which is hereby made a part of this AGREEMENT.
- 3. Time of Performance. Services required of the MANAGING PARTNER under this AGREEMENT shall be performed and completed in accordance with the "Time of Performance" set forth in Attachment 3, which is hereby made a part of this Agreement.
- 4. Other Terms and Conditions. The Special Conditions and General Conditions, set forth in Attachments 4 and 5, are hereby made a part of this AGREEMENT. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.
- 5. Standards of Conduct Declaration. The Standards of Conduct Declaration by the MANAGING PARTNER, set forth in Attachment 6, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the MANAGING PARTNER have executed this AGREEMENT effective as of the date first above written.

STATE

By _____
Chairperson and Member
Board of Land and Natural Resources
Date: _____

MANAGING PARTNER:

THE NATURE CONSERVANCY
A District of Columbia non-profit corporation

By _____
Its _____
Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Evidence of authority of the MANAGING PARTNER's representative to sign this AGREEMENT for the MANAGING PARTNER must be attached.

ATTACHMENT 1

SCOPE OF SERVICES

SECTION 1 –BACKGROUND RECITALS

A. The STATE and the CONTRACTOR desire to provide for the management of private lands for conservation purposes under the auspices of the NATURAL AREA PARTNERSHIP PROGRAM

B. The STATE and the CONTRACTOR have agreed to a partnership to perform these services. The STATE has agreed to fund 2/3 of the cost, and the CONTRACTOR has agreed to fund 1/3 of the cost of these services and perform the work as outlined in this AGREEMENT.

C. The CONTRACTOR, a non-profit corporation holds the fee title to certain real property on the Island of Hawaii, State of Hawaii, known as the Ka'ū Preserve, consisting of 3,511 acres, more or less, identified as Tax Map Key Parcels (3) 9-7-001-002 (169 acres), (3) 9-7-001-003 (211 acres), (3) 9-7-001-004 (2,620 acres), and (3) 9-7-001-007 (511 acres), and shown on the map attached to this AGREEMENT as Exhibit A (the "PRESERVE"). A copy of the recorded deed is attached as Exhibit B to this AGREEMENT.

D. The STATE and the CONTRACTOR have agreed on a six-year MANAGEMENT PLAN for the RESERVE, a copy of which is attached to this AGREEMENT as Exhibit C.

SECTION 2 – DEFINITION OF TERMS

Whenever the following terms or their pronouns are used in these requirements or in any documents or instruments where these requirements govern, the following definitions of the terms shall apply, unless a different meaning is clearly apparent from the context:

"AGREEMENT" means this written management agreement between the STATE and the CONTRACTOR setting forth the agreement of the parties for the conservation management of the PRESERVE and the funding therefore in accordance with the NATURAL AREA PARTNERSHIP PROGRAM.

"BOARD" means the Board of Land and Natural Resources of the State of Hawaii which is the governing body of the Department of Land and Natural Resources.

"BOARD OF ARBITRATION" means a board of arbitrators established pursuant to Attachment 4, Section 7 below convened to settle disputes arising from activities under this AGREEMENT.

“CHAIRPERSON” means the Chairperson and Member of the Board of Land and Natural Resources.

“COMMISSION” means the Natural Area Reserves System Commission established by section 195-6, Hawaii Revised Statutes.

“COOPERATING ENTITY” means a private, nonprofit land-holding organization or any other body as defined by Section 195-2, Hawaii Revised Statutes, deemed by the DEPARTMENT as satisfactory able to assist in the identification, acquisition, and management of natural area reserves.

“DEPARTMENT” means the Department of Land and Natural Resources, State of Hawaii. The DEPARTMENT may delegate its responsibilities as listed in the AGREEMENT to either the COMMISSION or the DIVISION.

“DIVISION” means the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii.

“MANAGEMENT PLAN” means a plan for the conservation management of the PRESERVE that meets the standards established by the DEPARTMENT for the Natural Area Reserves System, submitted by the CONTRACTOR to the DEPARTMENT and approved by the BOARD, as updated and/or amended from time pursuant to section 3.5 below and Attachment 4, Section 10.

“MANAGING PARTNER” means the party responsible for implementing the MANAGEMENT PLAN and is listed in this AGREEMENT as the CONTRACTOR. For purposes of this AGREEMENT, the MANAGING PARTNER is THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose business and post office address in Hawaii is 923 Nuuanu Avenue, Honolulu, Hawaii 96817.

“NATURAL AREA PARTNERSHIP PROGRAM” means the program established in the DEPARTMENT to provide State funds on a two-for-one matching basis with private funds for the management of private lands that are dedicated to conservation purposes pursuant to Chapter 195, Hawaii Revised Statutes.

“PRESERVE” means the Ka‘ū Preserve, consisting of 3,511 acres, more or less, identified as Tax Map Key Parcels (3) 9-7-001-002 (169 acres), (3) 9-7-001-003 (211 acres), (3) 9-7-001-004 (2,620 acres), and (3) 9-7-001-007 (511 acres) owned in fee and managed by The Nature Conservancy.

“STATE” means the State of Hawaii

SECTION 3 - OBJECTIVES

3.1 MANAGEMENT AREA – The area to be managed is the Ka‘ū Preserve, designated on the map attached as Exhibit A to this AGREEMENT.

3.2 THE PRIMARY OBJECTIVES – The STATE and the CONTRACTOR shall direct the efforts under this AGREEMENT to do the following: fund the management of, and manage, the natural resources of Ka‘ū Preserve in accordance with the MANAGEMENT PLAN and all approved amendments thereto, with the intention of protecting, maintaining or enhancing the native ecosystems and indigenous biological diversity.

3.3 SCOPE OF WORK – The CONTRACTOR shall perform the following technical and professional services:

- (a) Management plan. The CONTRACTOR shall carry out the activities outlined in the MANAGEMENT PLAN (Exhibit C).
- (b) Consultation. The CONTRACTOR shall be available for consultation regarding progress, upon request by the DEPARTMENT.

3.4 AUTHORITY TO CARRY OUT MANAGEMENT PLAN – The Contractor hereby represents that it has authority to carry out the MANAGEMENT PLAN.

3.5 MANAGEMENT PLAN EXTENSION – On April 1 of each year of this AGREEMENT if the MANAGING PARTNER has not submitted a notice of non-renewal as provided in HAR § 13-210-11, the MANAGEMENT PLAN shall automatically be extended for an additional year, with the result that there shall always be six (6) years remaining under the term of the MANAGEMENT PLAN as of July 1 of each year. The MANAGING PARTNER shall submit to the COMMISSION on or before April 1 of each such year an amended scope of work and budget for the new sixth year of the MANAGEMENT PLAN. If the MANAGING PARTNER does not submit the amended scope of work and budget by such date, the scope of work for the new sixth year shall be a continuation of the scope of work for the prior year, with the same budget as the prior year. The STATE will initiate documentation as appropriate to reflect the extension.

3.6 NO INCONSISTENT ACTIVITIES – The CONTRACTOR shall not take any actions on the PRESERVE which will undermine or conflict with the approved MANAGEMENT PLAN.

3.7 PERTINENT INFORMATION – The STATE shall furnish to the CONTRACTOR without charge any pertinent information reasonably available to the STATE without significant expense.

SECTION 4 – CONTROL AND PROGRESS OF THE WORK

4.1 REPORTS – The CONTRACTOR shall submit to the DIVISION for submittal to the BOARD reports showing work accomplished at the following times:

- (a) Progress Reports. A 6-month progress report shall be due for the period of July 1 to December 31 of each year under this AGREEMENT for which funding has been approved. This report shall include a description of management accomplishments and activities, areas needing technical advice, a preliminary accounting of expenditures, and proposed modifications to the current year's management projects. This report shall be submitted to the DIVISION by February 28 of each year under this agreement.
- (b) Annual Report. An annual report shall be due for the period of July 1 to June 30 of each year under this AGREEMENT for which funding has been approved. This report shall include a description of management accomplishments and activities; areas needing technical advice, status of public hunting opportunities and proposed modifications to the next year's approved management objectives, projects and budget. This report shall also include a detailed accounting of expenditures for the period of July 1 to June 30 to provide the basis for the annual reconciliation of the STATE's and CONTRACTOR's respective shares of the two-for-one matching funds as determined pursuant to Attachment 2, Section 1.2 (c). This report shall be submitted to the DIVISION by September 30 of each year under this agreement.

ATTACHMENT 2

COMPENSATION AND PAYMENT SCHEDULE

SECTION 1 – PAYMENT

1.1 SCOPE OF PAYMENT

(a) STATE's Payment. In full satisfaction of the STATE's 2/3 financial share of the two-for-one NATURAL AREA PARTNERSHIP PROGRAM match, and in consideration of the performance by the CONTRACTOR of the management activities outlined in the approved MANAGEMENT PLAN, the STATE agrees to pay the CONTRACTOR the total sum of 2/3 of the actual annual expenditures of the management work identified in the MANAGEMENT PLAN, up to, but not to exceed, 2/3 of the approved budget (outlined in section 1.1 (d) below), to be paid as provided herein. All funds to be paid by the STATE to the CONTRACTOR shall be encumbered on an annual basis for the forthcoming fiscal year provided that the STATE has approved the continuation of management activities outlined in the MANAGEMENT PLAN for the forthcoming fiscal year. Actual expenditures may include in-kind services such as heavy equipment operation and sources of labor.

(b) CONTRACTOR's SHARE. In full satisfaction of the CONTRACTOR's 1/3 financial share of the two-for-one NATURAL AREA PARTNERSHIP PROGRAM match, the CONTRACTOR agrees to assume and be responsible for the total sum of 1/3 of the actual annual expenditures for the management work identified in the MANAGEMENT PLAN, up to but not to exceed, 1/3 of the approved budget (outlined in section 1.1 (d) below).

(c) Additional Matching Funds. With prior written approval from the STATE and the CONTRACTOR, additional matching funds (on the same 2:1 ratio) may be expended to meet approved management goals as set forth in the MANAGEMENT PLAN and any amendments thereto, including any amendments to the budget established in the MANAGEMENT PLAN.

(d) Six Year Budget.

	Year1 *	Year 2	Year 3	Year 4	Year 5	Year 6
Ka'ū Budget	\$90,735	\$184,231	\$179,866	\$197,007	\$189,940	\$195,739
Private Match (1/3 of total)	\$30,245	\$61,410	\$59,955	\$65,669	\$63,313	\$65,246
TOTAL NAPP (2/3)	\$60,490*	\$122,821	\$119,911	\$131,338	\$126,627	\$130,493

* Partial Year performance and budget as per Attachment 3 Section 2.1

1.2 PAYMENT SCHEDULE

(a) Advanced Payment. Upon full execution of this AGREEMENT by both parties, and at the beginning of the fiscal year thereafter until this AGREEMENT is terminated as provided below, the STATE shall pay to the CONTRACTOR an amount equal to 1/3 of the STATE's annual matching share based on the approved budget.

(b) Progress Payment. Within 30 days following receipt of the 6-month progress report as provided in Attachment 1, Section 4.1(a) for each year until this AGREEMENT is terminated as provided below, the STATE shall pay to the CONTRACTOR an additional amount up to, but not more than, 1/3 of the STATE's annual matching share based on the approved budget. The CONTRACTOR shall determine whether the full 1/3 amount is requested or whether a lesser amount is sufficient as a progress payment. This payment shall not be subject to the STATE's approval of such progress report.

(c) Annual/Final Payment. Within 30 days of receipt of the annual report as provided in Attachment 1, Section 4.1(b), the STATE shall pay to the CONTRACTOR the balance of the approved matching funds for the year, calculated on the basis of actual expenditures only. In no case, however, shall the STATE pay more than 2/3 of the approved budget and any approved amendments thereto. If the State's initial and additional payments as provided above total more than 2/3 of the actual final expenditures reported by the CONTRACTOR, the CONTRACTOR shall return the difference with interest owed to the STATE. Interest shall be calculated at the floating rate as quoted on the first business day of each month in the Wall Street Journal for one hundred thousand (\$100,000) and above certificates of deposit. The final payment shall be subject to any withheld amounts as provided in Attachment 4, Section 8.1(e)(4).

(d) Annual or Final Acceptance and Payment. Annual or final acceptance means a written notice from the CHAIRPERSON to the CONTRACTOR advising the CONTRACTOR of the satisfactory fulfillment of the AGREEMENT's annual or final requirements.

1.3 UNAUTHORIZED WORK – The CONTRACTOR shall not receive matching STATE funds for any work not designated in the approved MANAGEMENT PLAN. All work performed by the CONTRACTOR prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE and BOARD approval of funding for any subsequent years and prior to BOARD approval of any subsequent amendments to the MANAGEMENT PLAN, shall be at the CONTRACTOR's own volition and risk, including work performed during the period of any deliberations by the BOARD or DEPARTMENT in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the CONTRACTOR may be paid for such work even if performed prior to such approval.

SECTION 2 – FISCAL RECORDS, MAINTENANCE, RETENTION, AND ACCESS

2.1 The CONTRACTOR shall maintain, in accordance with generally accepted accounting practices, fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices materially related to the CONTRACTOR's performance of services paid for by STATE funds under the AGREEMENT.

(a) The DEPARTMENT, the Comptroller of the State of Hawaii, and any of their authorized representatives, the committees (and their staffs) of the Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other records of the CONTRACTOR that is materially related to performance by the CONTRACTOR of services funded by the STATE under this AGREEMENT, in accordance with generally accepted audit procedures, for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's management program and fiscal practices to assure the proper and effective expenditure of funds under this AGREEMENT; provided, however, that no party conducting any such audit or examination shall copy, distribute, or retain any of such information or records, with the understanding that it is not the intention that the CONTRACTOR's financial and other records and information be made public.

(b) The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services funded under this AGREEMENT for at least 3 years after the date of submission of the CONTRACTOR's annual report for any designated period and payment for such expenditures by the STATE in accordance with its matching share, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been stated before the expiration of the 3-year period, the CONTRACTOR shall retain the records until completion of the action and resolution of all issues that arise from it or until the end of the regular 3-year retention period, whichever occurs later.

TIME OF PERFORMANCE

SECTION 1 – EXECUTION OF AGREEMENT

1.1 EXECUTION OF AGREEMENT – This AGREEMENT shall be promptly executed by the STATE and the CONTRACTOR upon approval by each party.

1.2 CERTIFICATE AND APPROVAL OF AGREEMENT – This AGREEMENT shall not be considered binding upon the STATE unless the availability of the funds therefore has been duly certified as prescribed by Section 103-39, Hawaii Revised Statutes, as amended. Further, this AGREEMENT shall not be considered to be fully executed unless the Office of the Attorney General of the State of Hawaii has approved this AGREEMENT as to form.

SECTION 2 – TERM

2.1 INITIAL TERM – This AGREEMENT shall commence on the effective date referenced on page 1 of the partnership agreement and shall be in effect until June 30 of the fifth State fiscal year (July 1 to June 30) following the fiscal year in which the AGREEMENT commenced (i.e. 6 years, or 5 years and a portion if the AGREEMENT commenced in the middle of a fiscal year), subject to continued State funding as provided in Attachment 3, Section 2.2 below, Attachment 4, Sections 8.1 and 8.2, and subject to the provisions of Attachment 2, Section 1.3 regarding payment of prior work.

2.2 STATE FUNDING CONDITION – This AGREEMENT is subject to continued State funding of the STATE's 2/3 share of the approved management budget as provided in Attachment 2, Section 1.1. If in any fiscal year the State does not appropriate, and/or the BOARD does not approve the expenditure of, funds sufficient to meet the STATE's full 2/3 share of the approved management budget, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriate and approved, subject to Attachment 4 Section 8.1 (b) regarding partial State funding.

2.3 AUTOMATIC ONE-YEAR RENEWALS – Each July 1 of each year during which this AGREEMENT shall be in effect shall be deemed to be the annual renewal date of this AGREEMENT. On each such annual renewal date, a year shall be added automatically to the initial term of this AGREEMENT; the term of this AGREEMENT shall be thereby renewed and extended annually, with the result that there shall always be 6 years remaining under the term of this AGREEMENT as of July 1 of each year, unless either party notifies the other in writing of non-renewal of this AGREEMENT by April 1. Notice of non-renewal by either party shall operate to cancel any future automatic one-year renewals; upon notice of non-renewal this AGREEMENT shall remain in effect for the balance of the full term then remaining since the original execution of this AGREEMENT or the last renewal date of this AGREEMENT, as the case may be.

SPECIAL CONDITIONS

The following special conditions shall apply to this agreement:

1. Coordination of Services by the State. To adequately reflect the partnership nature of this agreement, General Condition 1 is modified as follows. It shall be the responsibility of both the STATE and the CONTRACTOR to maintain close and frequent communications with each other at all stages of the management work and funding cycles contemplated by this AGREEMENT.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities:

2.1 General Condition 2.a regarding Inspections is modified as follows: The DEPARTMENT shall have the right to make inspections of the PRESERVE after prior notice to the CONTRACTOR. In addition, the DEPARTMENT shall be obligated to inspect the work on the PRESERVE not less frequently than once per year under this AGREEMENT, and more frequently in the case of a CONTRACTOR default as provided in Section 8.1(e) below, and to notify the CONTRACTOR within a reasonable time thereafter of any perceived defaults in the CONTRACTOR's implementation of the MANAGEMENT PLAN. The CONTRACTOR hereby represents that it has authority to allow access to the PRESERVE by the DEPARTMENT in connection with this AGREEMENT.

2.2 General Condition 2.c regarding Liability is modified as follows: The CONTRACTOR shall be responsible for the reasonable accuracy, completeness, and adequacy of any and all work and services performed by the CONTRACTOR under this AGREEMENT. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability (if such liability is determined to exist) to the CONTRACTOR's employees and agents in the course of their employment, except to the extent caused by the negligence or willful misconduct of the STATE, its employees or agents.

2.3 General Conditions 2.b, d, e, and f, remains as originally written in the General Conditions.

3. Conflicts of Interest. General Condition 5 is modified as follows: The CONTRACTOR covenants that the CONTRACTOR presently has no interest and shall not acquire any interest directly or indirectly which will conflict in any manner or degree with the performance of the CONTRACTOR's services hereunder except that (i) the CONTRACTOR is a COOPERATING ENTITY dedicated to the conservation of natural areas, (ii) the CONTRACTOR holds a conservation easement for such purpose over the PRESERVE, and (iii) the CONTRACTOR is and may in

the future be entering into other NATURAL AREA PARTNERSHIP PROGRAM agreements for other preserves.

4. Subcontracts and Assignments – General Condition 6 is modified as follows:

4.1 Subcontracts

- (a) Except with respect to any subcontracting contemplated in the approved MANAGEMENT PLAN, the CONTRACTOR shall not subcontract any of the CONTRACTOR's duties, obligations, or interests under this AGREEMENT and no such subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR show that any subcontracted portions of the work will provide a quality of work that is at least equal in quality to the work that would have resulted if the CONTRACTOR had performed such work itself. The CONTRACTOR shall obtain the subcontractor's tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's subcontractor have been paid, and shall provide it to the State upon its request.
- (b) Approval of the MANAGEMENT PLAN by the BOARD shall constitute requirement compliance of items (i) and (ii) of Section 4.1(a) above for any subcontracting contemplated therein.

4.2 Assignability

- (a) The CONTRACTOR may not assign any of the CONTRACTOR's duties, obligations, or interests under this AGREEMENT and the rights herein granted in whole or in part to any party and no such assignment shall be effective unless (i) the CONTRACTOR obtains prior written consent of the BOARD, which consent shall not be unreasonably withheld and shall not be withheld if the assignee is recognized by the STATE as a COOPERATING ENTITY, is committed to protecting and conservation purposes of this AGREEMENT, has the technical and professional skills to undertake the planned management activities and programs and agrees to carry out the 6-year MANAGEMENT PLAN in effect at the time of assignment, and (ii) the CONTRACTOR's assignee submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee have been paid.
- (b) Approval of assignment in no way relieves the original CONTRACTOR of payback and penalty obligations as outlined in Section 8.2 below unless specifically covered in the assignability amendment.

(c) Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this AGREEMENT shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii as provided in section 40-58, HRS.

4.3 General Conditions 6.a, b, c, and d remain as written in the general conditions.

5. Indemnification and Defense. General Condition 7 is modified as follows: The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii and its officers, employees, and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and all claims, suits and demands therefore, arising out of or resulting from the malicious, reckless, or negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents or subcontractors occurring during or in connection with the performance of the CONTRACTOR's services under this AGREEMENT, except to the extent caused by the negligence or willful misconduct of the STATE, its employees or agents. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this AGREEMENT.
6. Cost of Litigation. General Condition 8 is modified as follows: In case the STATE shall, without any fault on its part, be made a party to litigation commenced by or against the CONTRACTOR in connection with this AGREEMENT, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorney's fees except to the extent caused by the negligence or willful misconduct of the STATE, its employees or agents.
7. Disputes. General Condition 11 is modified as follows to reflect the partnership nature of the AGREEMENT.

7.1 Board of Arbitration. All disputes arising under this AGREEMENT shall be referred to Board of Arbitration as provided herein. The disputing parties shall notify the other of such fact in writing, and the board of three arbitrators (who, if possible, shall be experienced and familiar with both the natural ecological values and current accepted natural resource management practices of the Hawaiian Islands, one appointed by the STATE, one appointed by the CONTRACTOR, and one selected by the two appointees) shall decide the issue based on the terms of this AGREEMENT and the MANAGEMENT PLAN, as amended. If the two appointees cannot unanimously agree on the matter, the matter shall be decided by the third member of the panel who was selected by the other two appointees.

7.2 Suspension of Potentially Harmful Activities. All disputed activities which either party asserts may harm the conservation purposes of this AGREEMENT shall be discontinued until the dispute is resolved. Either part may bring an action in court to enforce this provision by injunction.

7.3 Final Decision. The decision of the panel or the third member of the panel shall be final, conclusive and binding upon both parties hereto. The parties agree not to challenge the decision as arbitrated under this provision unless circumstances have so changed as to make the arbitrated decision inapplicable to the present situation.

7.4 Governing Arbitration Statute. The provisions of this paragraph shall be governed by the provisions of Chapter 658 of the Hawaii Revised Statutes as it may be amended from time to time, and the arbitrators shall have all the powers and duties prescribed by this statute and judgment may be entered upon any such order by the applicable Circuit Court of the State of Hawaii, as provided in the Statute

7.5 Cost of Arbitration. All costs of such arbitration, other than attorney's fees, shall be borne equally by both parties.

8. Termination; Default; Penalty Payback. To reflect the long term nature of this partnership AGREEMENT and the need for long term commitment by both parties, General Conditions 12, 13 and 14 are changed as follows:

8.1 Termination of the Agreement – It is mutually agreed that this AGREEMENT may be terminated for any of the following reasons on the following terms:

(a) No State Funding. This AGREEMENT shall be terminated if the STATE does not approve full matching funds as outlined in the budget provided in the approved MANAGEMENT PLAN.

(1) In such event, this AGREEMENT shall automatically terminate without penalty at the end of the funding period in effect

(b) Partial State Funding. This AGREEMENT may be terminated by the CONTRACTOR if the STATE approves only a portion of the STATE's share of matching funds as outlined in the budget provided in the approved MANAGEMENT PLAN.

(1) In such event, the CONTRACTOR shall elect, by written notice to the STATE, either:

(A) to terminate this AGREEMENT without penalty at the end of the funding period then in effect; or

(B) to revise the updated MANAGEMENT PLAN and budget in the CONTRACTOR's reasonable discretion to accomplish significant management goals which can reasonably be funded with the amount of STATE matching funds actually approved.

(c) Non-Renewal. This AGREEMENT may be terminated without penalty by non-renewal effective at the end of the 6th full fiscal year following the date of notice on non-renewal as provided in HAR § 13-210-11(a). Provided, however, that notwithstanding non-renewal, if any default of the CONTRACTOR has not been remedied by the date of termination for non-renewal, the CONTRACTOR's obligation to remedy such default and the remedies therefore, including the penalty payback provisions, shall survive termination.

(d) Transfer to Government Agency. This AGREEMENT may be terminated without penalty if the PRESERVE is transferred or sold to a government agency committed to the preservation of biotic diversity and that possesses the technical and professional skills to manage the PRESERVE's natural resources.

(e) CONTRACTOR Defaults. This AGREEMENT may be terminated by the STATE upon substantial evidence that progress being made by the CONTRACTOR in carrying out the MANAGEMENT PLAN is inadequate, incorrect, or insufficient to substantially complete on a timely basis the work called for in the MANAGEMENT PLAN, subject to the lack of performance notification provisions set forth below.

(1) Penalties Apply. In the event of termination for default in accordance with these provisions, the penalty payback provisions set forth below shall apply.

(2) Lack of Performance Notification. In such event, the STATE may terminate for default, provided the STATE adheres to the following procedures for notice and opportunity to cure prior to termination:

(A) The STATE shall first notify the CONTRACTOR in writing of any perceived inadequacy, incorrectness or insufficient progress. The STATE and the CONTRACTOR shall meet within two weeks thereafter, and every three months thereafter until nine months following the date of the notice, and discuss in good faith the perceived failure and the reasons therefore and any subsequent progress or lack thereof. If the reason for the failure is a good faith inability of the CONTRACTOR to carry out the terms of the MANAGEMENT PLAN for reasons beyond the CONTRACTOR's reasonable control, including without limitation economic hardship as described in Attachment 4, Section 10.6 below, the STATE and the CONTRACTOR shall specifically consider the need to amend the MANAGEMENT PLAN, including extending the time to carry out the work

called for in the MANAGEMENT PLAN and/or revising the budget established in the MANAGEMENT PLAN, subject to the provisions of Attachment 1, Section 3.5 and Attachment 4, Section 10 of this AGREEMENT regarding amendments to this AGREEMENT and the MANAGEMENT PLAN. The DEPARTMENT shall be obligated to inspect the PRESERVE once each quarter following the date of the notice to determine the updated status of the perceived defaults.

(B) Following the expiration of the nine month period following notice of default given by the STATE to the CONTRACTOR and failure of the CONTRACTOR to remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within nine months, the STATE may elect to notify the CONTRACTOR of its intention to terminate the AGREEMENT for default. Such notice shall be in writing, shall state that the STATE will terminate the AGREEMENT for default on a date not less than 3 (three) months thereafter if the CONTRACTOR does not remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, and shall specify that penalties as provided under the AGREEMENT shall apply.

(C) If the CONTRACTOR fails to remedy the default within 3 months thereafter, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, the STATE may terminate the AGREEMENT effective immediately for default by written notice thereof to the CONTRACTOR.

(D) The STATE shall be deemed to have complied with these provisions if it attempts in good faith to meet with the CONTRACTOR and to have the DEPARTMENT inspect the PRESERVE as provided above, whether or not the CONTRACTOR cooperates in such procedures.

(3) All disputes regarding default and termination under this AGREEMENT which cannot be resolved by the parties shall be referred to arbitration as provided in Attachment 4, Section 7 above.

(4) If the CONTRACTOR has not fully performed its work under this AGREEMENT on expiration or termination of this AGREEMENT, the STATE may withhold the final payment to the CONTRACTOR pending full completion of the CONTRACTOR's

work. This withheld payment shall be paid by the STATE to the CONTRACTOR on final acceptance and tax clearance as provided in Attachment 2, Section 1.2 (d) and General Conditions # 2 and 17.

8.2 Penalty Payback

(a) Payback and Penalties. In the event that the CONTRACTOR defaults on this AGREEMENT as provided in Attachment 4, Section 8.1(e) above and the STATE has followed the Lack of Performance Notification procedures as outlined in Attachment 4, Section 8.1(e)(2) above, the CONTRACTOR shall promptly pay to the STATE the following payback and penalty monies:

(1) Refund of State Funds with Interest – 6 Years. All matching funds paid by the STATE to the CONTRACTOR in the previous 6 years (or such portion thereof as STATE shall have funded in this AGREEMENT shall have been in effect for less than 6 years) shall be returned to the STATE with interest. Interest shall be calculated at eight percent (8%) per year compounded annually. In the event that this AGREEMENT shall have been in effect for more than 6 years, the CONTRACTOR shall be liable only to pay back STATE funds for the immediately proceeding 6 years.

(2) Additional Penalty. An additional penalty of 10 percent (10%) of the total amount of the matching funds expended by the STATE in the previous 6 years shall be paid by the CONTRACTOR to the STATE.

(b) No Other Party Liable. Only the CONTRACTOR receiving matching STATE funding under the NATURAL AREA PARTNERSHIP PROGRAM shall be liable to the STATE under this AGREEMENT for the payback and penalty.

(c) Disputes. The CONTRACTOR shall have the right to submit any disputes to the arbitration procedure as outlined in Attachment 4, Section 7 above if it feels that the imposition of payback, interest, and/or additional penalties is unwarranted.

8.3 Inconsistent Activities – It is expressly understood and agreed that activities inconsistent with the MANAGEMENT PLAN by third parties over whom the CONTRACTOR has no reasonable control shall not constitute or give rise to a default by the CONTRACTOR under this AGREEMENT and no penalty provisions shall apply to the CONTRACTOR.

8.4 Effect of Eminent Domain

(a) Full Condemnation. If any action is eminent domain for the condemnation of the fee title of the entire PRESERVE described herein is filed, or if the PRESERVE is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any such action or acquisition by the federal government or the state government or any person, instrumentality or agency acting under the authority or power of the federal government or the state government, this AGREEMENT shall be deemed null and void without penalty as to the land actually being condemned or so acquired as of the date the action is filed, and upon the termination of such a proceeding, this AGREEMENT shall be null and void without penalty for all land actually taken or acquired.

(b) Partial Condemnation. When such an action to condemn or acquire less than all the entire PRESERVE is commenced, this AGREEMENT shall be deemed null and void without penalty as to the portion so condemned or acquired.

(c) Adjustment of MANAGEMENT PLAN. The land actually taken by the means set forth above in this Section shall be removed from this AGREEMENT and the MANAGEMENT PLAN and budget adjusted accordingly on a reasonable basis by the STATE and the CONTRACTOR.

9. Cost and Expenses. General Condition 16.b is replaced by the following:
Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate sized vehicle except as approved in the MANAGEMENT PLAN.
10. Change Order. To adequately reflect the partnership nature of this AGREEMENT and to respect the fact that both parties are contributing matching funds to the project, General Condition 20 is replaced by the following:
- 10.1 The CONTRACTOR may propose for approval by the DIVISION, and the DIVISION may approve, minor alterations to the approved MANAGEMENT PLAN which will not have a material adverse impact on the achievement on the overall management objectives of the MANAGEMENT PLAN.
- 10.2 The CONTRACTOR may propose for approval by the BOARD, and the BOARD may approve, significant changes to the approved MANAGEMENT PLAN or budget to adapt to current conditions. Significant amendments to the MANAGEMENT PLAN shall include an amended budget. The BOARD shall make the proposed amendments available for public review prior to final approval.
- 10.3 The proposed amendments may include, without limitation, re-establishment of management priorities, increase or reduction of the specific work, budget, or time

for performance of specified tasks, all as determined considering the natural condition of the PRESERVE, existing management priorities, threats, potential for decline of the natural resource during any period under consideration, availability of specialized labor or technical expertise, permitting requirements and time needed to obtain permits, and other material factors.

10.4 Expenditures. Expenditures for implementation of the approved MANAGEMENT PLAN which are less than the amounts allocated in the approved budget may be made by the CONTRACTOR in its discretion so long as the quality of materials and work as called for in the approved MANAGEMENT PLAN is not adversely affected. Any proposed expenditures which will increase the overall STATE's matching share above the amount set forth in the approved budget, which are proposed either as a result of additional costs required to implement the approved MANAGEMENT PLAN or as a result of amendments to the approved MANAGEMENT PLAN, must be mutually agreed upon in advance by and between the BOARD and the CONTRACTOR. If so agreed upon the approval of these expenditures shall be incorporated in written amendment to this AGREEMENT.

10.5 Updated MANAGEMENT PLAN. Updating the MANAGEMENT PLAN shall follow the following process and time line:

(a) Process for updating MANAGEMENT PLAN. Updating and obtaining approval for revised plans shall follow these three steps:

- (1) The CONTRACTOR shall submit an updated 6-year MANAGEMENT PLAN, with a revised budget, to the DEPARTMENT for its review. The DEPARTMENT shall make a recommendation to the BOARD in regard to approval of requested funding amounts and management activities.
- (2) The CONTRACTOR, with assistance from the DIVISION, shall prepare and complete an Environmental Assessment (EA) for the updated plan, according to Chapter 343, HRS and Title 11, Chapter 200, Department of Health Administrative rules. The EA shall be completed prior to BOARD submission for approval.
- (3) The DIVISION shall submit the updated MANAGEMENT PLAN to the BOARD for approval.

(b) Timeline for Updating MANAGEMENT PLAN. The CONTRACTOR shall submit an updated 6-year MANAGEMENT PLAN, with a revised budget, to the DEPARTMENT by August 31 of the 6th State fiscal year for which management activities and funding were approved by the BOARD, and every 6 years thereafter so long as State funding is available, extending the term of the MANAGEMENT PLAN an additional 6 years. If funding for this agreement is approved for less than 6 years, then the updated

MANAGEMENT PLAN and revised budget shall be submitted to the DEPARTMENT by August 31 of the last State fiscal year in which funding is approved. The CONTRACTOR may submit an updated 6-year MANAGEMENT PLAN and revised budget to the DEPARTMENT more frequently than every 6 years, at its option; in such event, the next updated MANAGEMENT PLAN and revised budget shall be submitted to the DEPARTMENT by August 31 of the 6th State fiscal year thereafter. The revised and updated budget and MANAGEMENT PLAN submitted by the CONTRACTOR shall be reasonable and in good faith taking into account the natural resources on the RESERVE, and the threats to the resources, and the ability of the CONTRACTOR to carry out the MANAGEMENT PLAN.

10.6 Economic Hardship. Notwithstanding other provisions of this AGREEMENT, in the event that the CONTRACTOR determines in good faith that it is financially unable without undue economic hardship to fulfill its 1/3 financial share as provided in Attachment 2, Section 1.1(b) or to carry out fully the work of the MANAGEMENT PLAN within the budget and time period established thereby, the CONTRACTOR may apply to the STATE to renegotiate the terms thereof.

(a) Negotiation of Amendment. In such event, the STATE and the CONTRACTOR shall meet and negotiate in good faith an acceptable amendment to the MANAGEMENT PLAN that seeks to accomplish the significant objectives of the MANAGEMENT PLAN reasonably within the CONTRACTOR's financial means. The amendment may include, without limitation, re-establishment of management priorities and reduction and/or deferral of the specified work, involving significant costs, and /or extensions of time for performance of specified tasks, all as determined considering the natural conditions of the PRESERVE, existing management priorities, threats, potential for decline of the natural resource during any period under consideration, other potential sources of funding, and other material factors.

(b) Disputes. If the STATE and the CONTRACTOR are unable to agree reasonably and in good faith on a suitable amendment to the MANAGEMENT PLAN, the parties shall refer any such disputes to arbitration as provided in Attachment 4, Section 7 above.

(c) No Termination for Economic Hardship. This provision shall not be construed to allow the CONTRACTOR or the STATE to terminate this AGREEMENT for economic hardship; it is rather intended to provide a mechanism for reasonable revisions to the MANAGEMENT PLAN for economic hardship.

11. Change in Cost-Reimbursement Agreement. To adequately reflect the partnership nature of this AGREEMENT and to respect the fact that both parties are contributing matching funds to the project, General Condition 23 is replaced by Special Condition 10 of this AGREEMENT.

12. Publicity. It is expressly understood and agreed to by the STATE that General Condition 25 dealing with Publicity shall not be applicable to acknowledgement of the STATE's participation in and funding of the project in any of the CONTRACTOR's reports, brochures, advertisements or other information released to its members, the media or the public. Whenever the CONTRACTOR mentions this project as outlined above, credit shall be given to the STATE's Natural Area Partnership Program. The CONTRACTOR shall refer all inquiries about STATE policy or administration of the Program to the DIRECTOR or his designee.
13. Ownership Rights and Copyright. It is expressly understood and agreed to by the STATE that General Condition 26, shall not be applicable to any research, studies, reports, management techniques, or any other product development by the CONTRACTOR during the course of the AGREEMENT. The CONTRACTOR's products are not subject to the custody by the STATE. They shall remain the property of the CONTRACTOR; however the STATE may use them at any time.
14. Waiver. To more adequately reflect the partnership nature of this AGREEMENT, the first sentence of General Condition 39 is modified as follows: The failure of either party to insist upon the strict compliance with any term, provision or condition of this AGREEMENT shall not constitute or be deemed to constitute a waiver or relinquishment of such party's right to enforce the same in accordance with this AGREEMENT. The rest of General Condition 39 remains as originally written.
15. Notices. Unless specifically outlined otherwise, any notice called for in this AGREEMENT shall be sent by facsimile transfer, overnight or hand delivery, or by certified mail, addressed as follows:

To the CONTRACTOR at:

The Nature Conservancy
Hawaii Field Office
923 Nuuanu Avenue
Honolulu, Hawaii 96817
Attn: Executive Director
Ph. (808) 537-4508
Fax (808) 545-2019

To The STATE at:

Division of Forestry & Wildlife
Dept. of Land & Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Attn: Natural Areas Program Manager
Ph. (808) 587-0054
Fax (808) 587-0160

or to such other address as either party may inform the other of from time to time; and the notice shall be deemed to be received on the date evidenced by the facsimile transfer verification, overnight or hand delivery receipt, or certified mail receipt.

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GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing

agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
 - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
 - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement

officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure; and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such

officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
 - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
 - a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer

shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.



STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

CONTRACTOR

By _____

(Signature)

Print Name _____

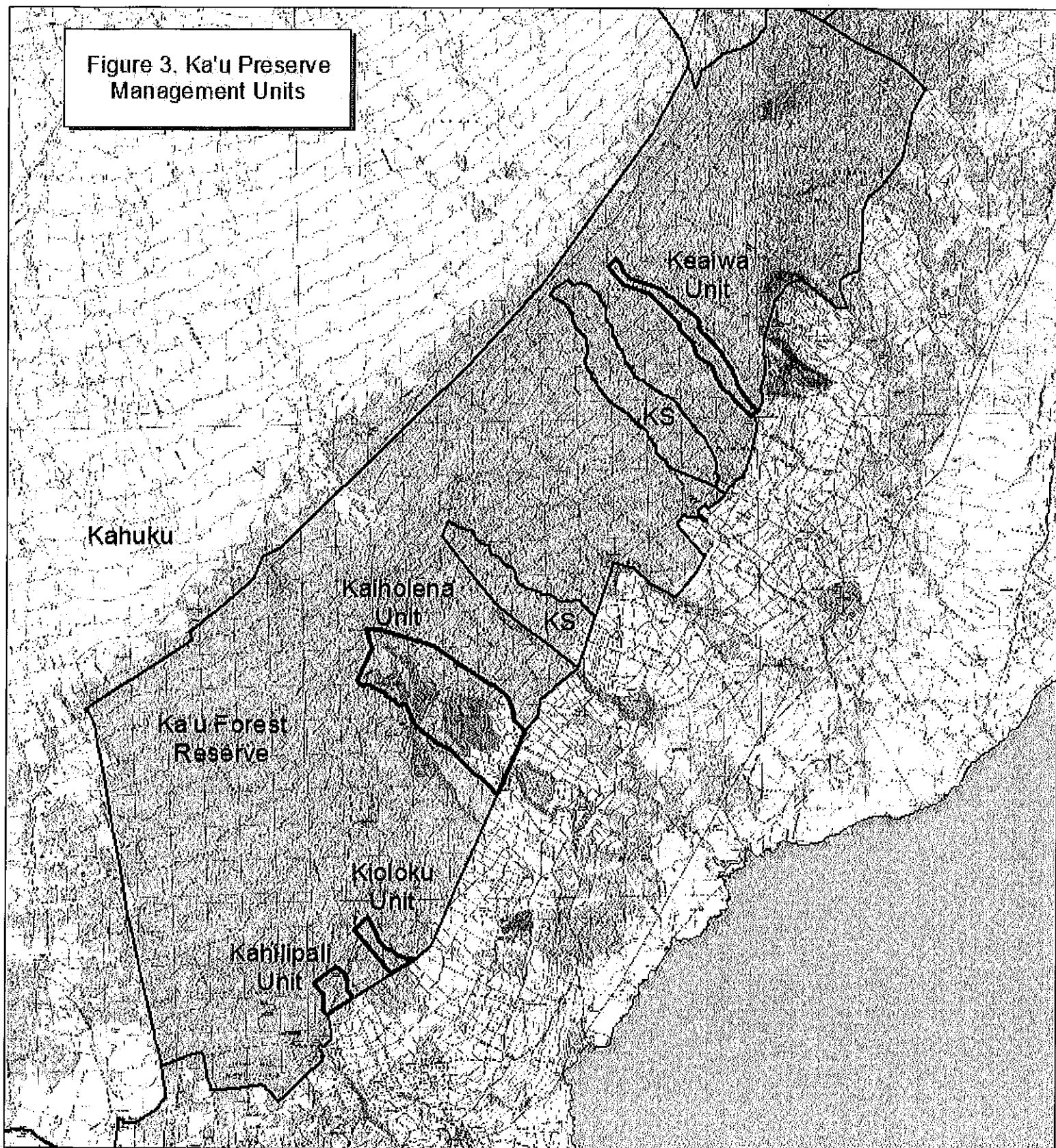
Print Title _____


Name of Contractor _____

Date _____

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

Figure 3. Ka'u Preserve
Management Units



 Ka'u Preserve Management Units



5 0 5 10 Miles





R-535

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

MAR 01, 2002 08:02 AM

Doc No(s) 2002-037417

ACTING
/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$2113.00Return by Mail (☒) Pickup () To:MELINDA Y. CHING, ESQ.
THE NATURE CONSERVANCY
923 NU'UANU AVE
HONOLULU, HI 96817TGOH 200202496 A
TGES A2-101-0178
BARBARA PAULO

Total No. of Pages: 13

TMK Nos. (3) 9-7-001: 2; 9-7-001: 3; 9-7-001: 4 (portion); (3) 9-7-001: 7

SPECIAL WARRANTY DEED WITH EXCEPTIONS AND RESERVATIONS**KNOW ALL MEN BY THESE PRESENTS**

That MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation, hereinafter called the "Grantor," for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to Grantor paid by **THE NATURE CONSERVANCY**, a District of Columbia nonprofit corporation, whose address is 4245 North Fairfax Drive, Suite 100, Arlington, VA 22203, hereinafter called the "Grantee," receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey the real and personal property (if any) described in Exhibit "A" hereto attached and expressly made a part hereof, unto Grantee as tenant in severalty;

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, as to said real property, together with all buildings, improvements, tenements, hereditaments, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto Grantee, absolutely and in fee simple, and as to said personal property (if any), absolutely and forever.

And Grantor does hereby covenant with Grantee, that it has good right to convey said premises, that the interest of Grantor is free and clear from all encumbrances made by, through or under Grantor, except as herein mentioned and current real property taxes, if any, which are to be prorated as of the date of recording of this instrument, and it will WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

EXCEPTING AND RESERVING, however, unto Grantor, its successors and assigns, forever, all water and water rights within or appurtenant to: (a) the spring known as "Old Plantation Spring" located on a portion of the granted premises identified by TMK No. (3) 9-7-1-4; and (b) the existing tunnel and pipeline on a portion of the granted premises identified by TMK No. (3) 9-7-1-7 (the "Reserved Water Sources"); together with such rights of way for ingress and egress as shall be reasonably necessary in connection therewith; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water; and provided further, however, that such reserved right as to Old Plantation Spring shall terminate ten (10) years after the date of recording this Deed if Grantor, its successors or assigns, has not commenced to develop any watercourse improvements for such Reserved Water Source before such date. Subject to any laws or governmental regulations applicable thereto, Grantee shall have the right to up to twenty-five percent (25%) of the water from Old Plantation Spring subject to payment of Grantee's pro rata share of the actual cost to deliver water to Grantee, not including the cost to develop or construct water delivery systems. Grantee shall pay for any connections or extensions needed for its own use.

FURTHER EXCEPTING AND RESERVING unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operations, the unrestricted right to engage in any type of farming operation on such appurtenant lands, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the granted premises. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal & State environmental and agricultural laws and regulations.

FURTHER EXCEPTING AND RESERVING unto Grantor, its successors and assigns, forever, watercourse, including tunnel, flume line and pipeline, easement(s) of such character and sufficient size as Grantor, its successors and assigns, may establish for the flowage, transport and direction of water from the Reserved Water Sources upon, through, along and over portions of the granted premises identified by TMK Nos. (3) 9-7-1-4 and (3) 9-7-1-7 in its currently existing location, including the right to install, construct, maintain, operate, repair, remove or replace in substantially similar size and location tunnel, flume line, pipeline and other improvements in connection with said easement for ten (10) years after the date of recording this Deed on parcel (3) 9-7-1-4 and to maintain, operate, repair, remove or replace in substantially

Deed on parcel (3) 9-7-1-4 and to maintain, operate, repair, remove or replace in substantially similar size and location tunnel, flume line, pipeline and other improvements in connection with said easement on parcel (3) 9-7-1-7, together with such rights of way for ingress and egress as shall be reasonably necessary in connection therewith; provided, however, that in the exercise of said rights as to the Reserved Water Sources, Grantor agrees to adhere to reasonable procedures, given the Grantee's goal of preventing the introduction of alien species, established by Grantee and provided to Grantor for the reduction and prevention of alien species onto such property. The actual location(s) of the easement(s) shall be subject to Grantee's consent, which shall not be unreasonably withheld.

Grantee represents that Grantee is familiar with the property described in Exhibit "A" and has made such independent investigations of all possible issues as Grantee deems necessary or appropriate. Grantee is relying solely upon Grantee's own inspection, investigation and analysis and is acquiring the granted premises "AS IS," in its present state and condition, without warranty or representation, express or implied, by Grantor or its representatives as to any matter, except as contained in this Deed. Grantor has not made any representations to Grantee other than as set forth in this Deed and it is expressly understood and agreed by and between Grantor and Grantee that Grantor makes no warranties, express or implied, with respect to the granted premises or improvements (if any), including, but not limited to, the physical, environmental, or other condition of the granted premises; the existence or non-existence of hazardous or toxic materials, wastes or substances or archaeological or historic matters; the size, dimension, or topography of the granted premises; any implied warranty of merchantability, habitability, workmanlike construction or fitness of the granted premises for a particular purpose; compliance with or any other representation in regard to any building, health, zoning, environmental, land use or other applicable county, state or federal statute, ordinance, code, rule, regulation or other law, or the availability or condition of any electrical, water, gas, plumbing or sewage systems.

Grantee is also aware and accepts that the property described in Exhibit "A" is not serviced by County of Hawaii water, sewer, electricity, waste disposal or telephone service and accepts the property without the availability of these utility services. Grantee understands and accepts that the subject parcel is not connected to a sewer system and Grantee is advised to contact the State of Hawaii, Department of Health, Wastewater Section regarding waste disposal (cesspool or septic) requirements of Hawaii.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof.

This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signatures of all of the parties were upon the same document.

IN WITNESS WHEREOF, Grantor and Grantee have executed these presents this
28th day of February, 2002.

MAUNA KEA AGRIBUSINESS CO., INC.,
a Hawaii corporation

By WK Tallett
WK TALLETT
Its Chairman

By John C. Cross
John C. CROSS
Its PRESIDENT

Grantor

THE NATURE CONSERVANCY,
a District of Columbia nonprofit corporation

By Suzanne Case
SUZANNE CASE
Its Assistant Secretary

Grantee

STATE OF HAWAII

CITY & COUNTY OF HONOLULU

)
) SS:
)

On this 28th day of February, 2002, before me appeared
WIKI TALLETT and JOHN C. CROSS, to me personally known, who,
being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument
as the free act and deed of such persons and if applicable in the capacity shown, having been duly
authorized to execute such instrument in such capacity.

Signature: 

Print Name: _____

Notary Public, State of Hawaii

BARBARA T. PAULO
Expiration Date: June 14, 2004

My commission expires: _____

)

i

;

Signature:

Notary Public, State of Hawaii

BARBARA T. PAULO

Expiration Date: June 14, 2004

Exhibit "A"

PROPERTY DESCRIPTION

ITEM I: TMK (3) 9-7-1-2

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 6882, Land Commission Award Number 9971, Apana 10 to W. P. Leleiohoku (Boundary Certificate No. 92)) situate, lying and being at Kahilipali Nui, District of Ka'u, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3) 9-7-001-002, and containing an area of 169.000 acres, more or less.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : C. BREWER HOMES, INC., a Hawaii corporation

GRANTEE : MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation, as Fee Owner

DATED : December 15, 1993

RECORDED : Document No. 93-208054

SUBJECT, HOWEVER, TO:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. That portion of the land described above located within the boundaries of the Ka'u Forest Reserve as shown on tax map.
4. GRANT

TO: WATER COMMISSION OF THE COUNTY OF HAWAII

DATED: May 25, 1978

RECORDED: Liber 12921 Page 643

GRANTING: the right in the nature of a non-exclusive easement and including also the right of entry to construct, maintain, operate, repair, remove and replace any and all pipes or other structures in, over and across the following:

EASEMENT 1 (20-FOOT WIDE) FOR WATERLINE PURPOSES

Being a portion of Royal Patent Number 6882, Land Commission Award Number 9971, Apana 10 to W. P. Leleiohoku (Boundary Certificate No. 92), situated approximately 3200 feet northeast from Haao Springs Reservoir at Kahilipali Nui, Ka'u, Island of Hawaii, Hawaii, being a strip of land 20 feet wide and extending 10 feet on each side of the following described centerline:

Beginning at the south end of this centerline and on the boundary between the lands of Kahilipali Nui and Waiohinu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAAO" being 3265.55 feet north and 622.67 feet west, thence running by azimuths measured clockwise from true South:

1. 205° 00' 321.31 feet along the remainder of Royal Patent 6882, Land Commission Award 9971, Apana 10 to W. P. Leleiohoku (Boundary Certificate No. 92);
2. 204° 10' 441.00 feet along same;
3. 204° 40' 499.00 feet along same;
4. 203° 30' 497.00 feet along same;
5. 203° 35' 280.00 feet along same;
6. 201° 45' 408.00 feet along same;
7. 205° 45' 225.00 feet along same;
8. 203° 20' 470.00 feet along same;
9. 203° 50' 498.00 feet along same;
10. 203° 40' 398.00 feet along same;
11. 204° 25' 67.00 feet along same to the north end of this centerline at the center of a stream, being the boundary between the lands of Kahilipali Nui and Kaunamano and containing an area of 82,086 square feet or 1.884 acres.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
7. Any and all existing roadways, trails, easements of right-of-way, flumes and irrigation ditches.

ITEM II: TMK (3) 9-7-1-3

All of that certain parcel of land (being portion of the land(s) described in and covered by Boundary Certificate No. 57, being the land of Kioloku) situate, lying and being at Kioloku, District of Ka'u, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3) 9-7-001-003, and containing an area of 211.000 acres, more or less.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : C. BREWER HOMES, INC., a Hawaii corporation

GRANTEE : MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation, as Fee Owner

DATED : December 15, 1993

RECORDED : Document No. 93-208054

SUBJECT, HOWEVER, TO:

1. Ka'u Forest Reserve as shown on tax map.
2. GRANT

TO: WATER COMMISSION OF THE COUNTY OF HAWAII

DATED: May 25, 1978

RECORDED: Liber 12921 Page 643

GRANTING: the right in the nature of a non-exclusive easement and including also the right of entry to construct, maintain, operate, repair, remove and replace any and all pipes or other structures in, over and across the following:

EASEMENT 2 (20-FOOT WIDE) FOR WATERLINE PURPOSES

Being a portion of the land of Kioloku (Boundary Certificate No. 57), situated approximately 11,500 feet northeast from Haao Springs Reservoir at Kahilipali Nui, Ka'u, Island of Hawaii, Hawaii, being a strip of land 20 feet wide and extending 10 feet on each side of the following described centerline:

Beginning at the south end of this centerline and on the boundary between the lands of Kaunamano and Kioloku, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAAO" being 10,990.96 feet north and 2149.76 feet west, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|--------|---|
| 1. | 188° 05' | 28.99 | feet along the remainder of the land of Kioloku (Boundary Certificate No. 57); |
| 2. | 183° 25' | 117.00 | feet along same; |
| 3. | 158° 00' | 180.00 | feet along same; |
| 4. | 181° 30' | 94.00 | feet along same; |
| 5. | 131° 20' | 141.15 | feet along same to the north end of this centerline on the boundary between the lands of Hionaa and Kioloku and containing an area of 11,223 square feet or 0.258 acre. |

3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
5. Any and all existing roadways, trails, easements of right-of-way, flumes and irrigation ditches.
6. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

ITEM III: TMK (3) 9-7-1-4 (portion)

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number (none), Land Commission Award Number 9971, Apana 11 to W. P. Leleiohoku and portion of Royal Patent Number 7621, Land Commission Award Number 7715, Apana 14 to Lota Kamehameha) situate, lying and being at Hilea Nui, District of Ka'u, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3) 9-7-001-004, and containing an area of 2,657.000 acres, more or less.

EXCEPTING AND EXCLUDING from the above described parcel of land that portion of Royal Patent Number 7621, Land Commission Award Number 7715, Apana 14 to Lota Kamehameha containing an area of 37.00 acres, more or less, as cross-hatched on map attached hereto and marked as EXHIBIT "B". [attach as exhibit B the tax map showing excluded area]

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : C. BREWER HOMES, INC., a Hawaii corporation

GRANTEE : MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation, as Fee Owner

DATED : December 15, 1993

RECORDED : Document No. 93-208054

SUBJECT, HOWEVER, TO:

1. Ka'u Forest Reserve as shown on tax map.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
4. Any and all existing roadways, trails, easements of right-of-way, flumes and irrigation ditches.
5. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

TOGETHER WITH, BUT SUBJECT TO:

5. That certain unrecorded Ka'u Agribusiness Co., Inc., Revocable License dated February 1, 1999, between Mauna Kea Agribusiness Co., Inc., as Owner, and Richard Johansen, as Licensee.
6. That certain unrecorded Ka'u Agribusiness Co., Inc., Revocable License dated February 1, 2000, between Mauna Kea Agribusiness Co., Inc., as Owner, and Richard Johansen, as Licensee.

ITEM IV: TMK (3) 9-7-1-7

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 7876, Land Commission Award Number 8452, Apana 16 to A. Keohokalole) situate, lying and being at Keaiwa, District of Ka'u, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3) 9-7-001-007, and containing an area of 511.000 acres, more or less.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : C. BREWER HOMES, INC., a Hawaii corporation

GRANTEE : MAUNA KEA AGRIBUSINESS CO., INC., a Hawaii corporation, as Fee Owner

DATED : December 15, 1993

RECORDED : Document No. 93-208054

SUBJECT, HOWEVER, TO:

1. Ka'u Forest Reserve as shown on tax map.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
4. Any and all existing roadways, trails, easements of right-of-way, flumes and irrigation ditches.
5. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

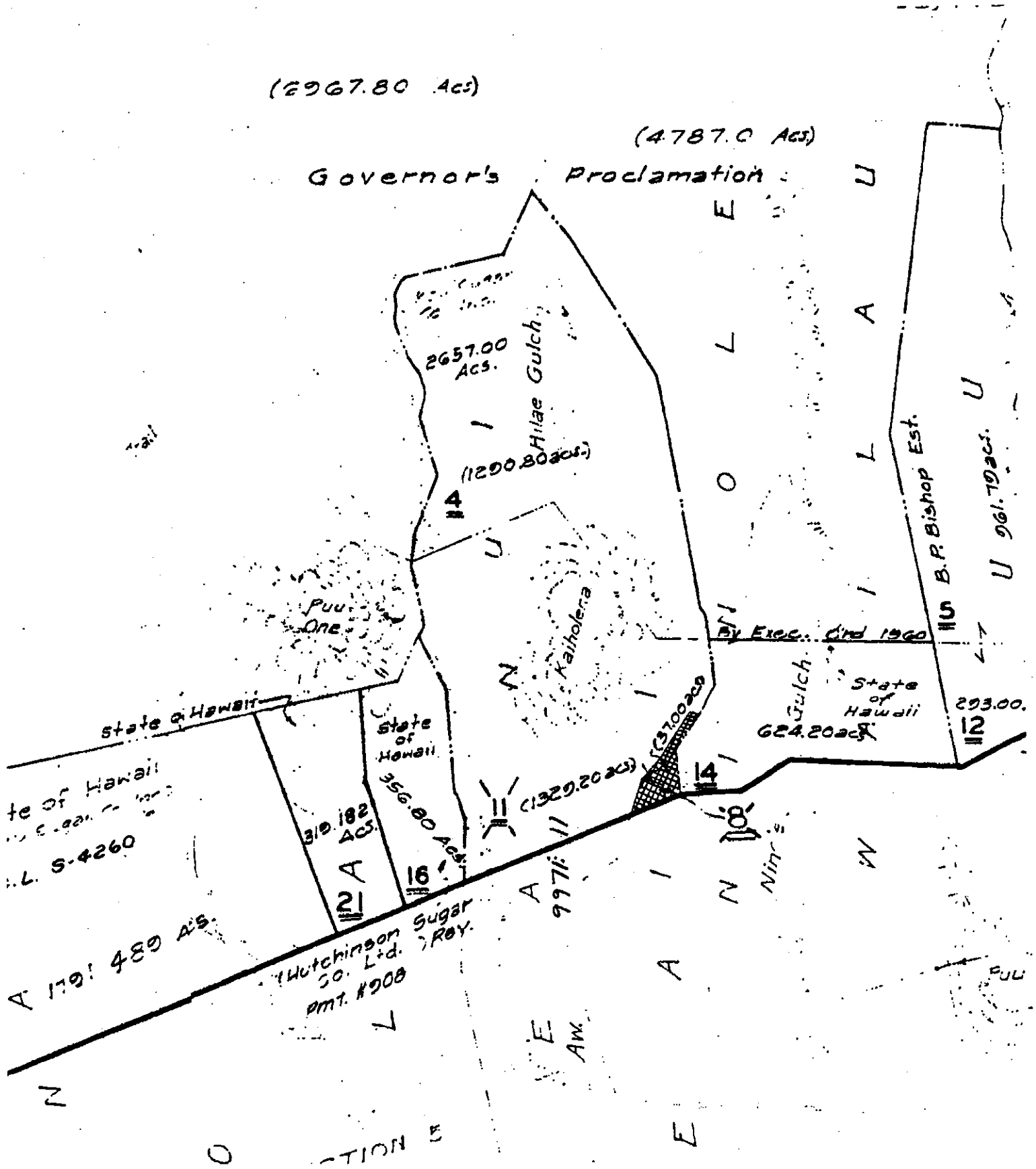
EXHIBIT "6"

(2967.80 Acs)

(4787.0 Acs)

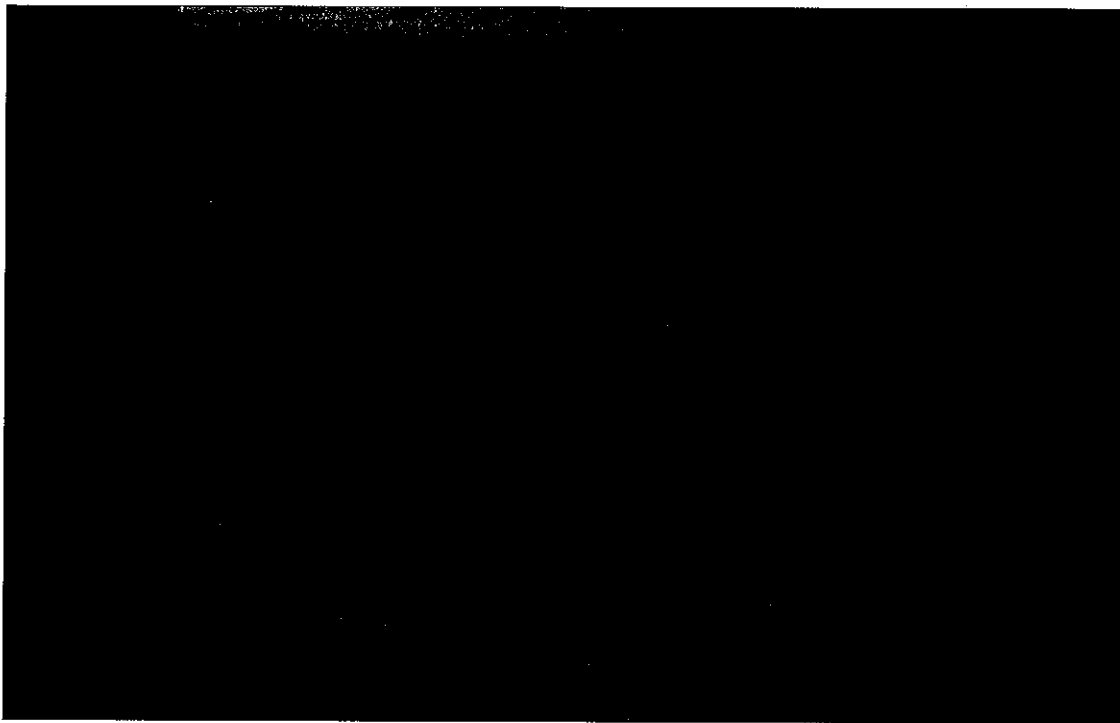
Governor's

Proclamation



Ka'ū Preserve Hawai'i Island, Hawai'i

**Long-Range Management Plan
Fiscal Years 2007–2012**



Submitted to the
**Department of Land & Natural Resources
Natural Area Partnership Program**

Submitted by
The Nature Conservancy – Hawai'i Operating Unit
March 2006

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EXECUTIVE SUMMARY

The Nature Conservancy of Hawai'i (TNCH) has a statewide system of 12 preserves totaling 32,000 acres and has helped protect another 160,000 acres through cooperative projects with federal, state, county, and private partners. On the island of Hawai'i, the Conservancy manages two forest preserves: Kona Hema and Ka'ū. Management at Ka'ū Preserve is being considered for funding under the State's Natural Area Partnership (NAP) Program. This innovative program provides matching funds (\$2 state to \$1 private) for the management of qualified private lands that have been permanently dedicated to conservation.

While the Ka'ū forest is largely intact, it is vulnerable to irreversible change in the absence of effective management. The Conservancy acquired four parcels in this forest to ensure protection of key habitat and to facilitate partnering with other managers of contiguous lands. The Conservancy also facilitated the purchase of the Kahuku Ranch by the National Park Service, the largest conservation land acquisition project in the history of the State. The time is ripe for a collaborative approach to forest conservation and compatible public use management in this region. Accelerated planning and management of Conservancy lands will provide a catalyst for conservation at a landscape scale.

The Ka'ū Preserve Long-Range Management Plan documents the long-range goals and strategies for preserve management over the next 6 years (FY2007 – 2012) and was prepared in compliance with the rules governing the NAP program (Hawai'i Administrative Rules Chapter 13-210).

Over the next 6 years we will work to collect and document the necessary information about the biological resources of the area and the primary threats to those resources in order to better understand them. Our management efforts in Ka'ū Preserve will focus on the following activities:

1. **Ungulate control** – The Nature Conservancy's primary management activity in Ka'ū will be to maintain forest integrity, reduce erosion, and limit weed invasion by reducing ungulate levels through use of standard management tools. Pigs are the primary targets of our removal programs, while mouflon sheep and goats will also be targeted if they occur in the preserve. We will also conduct ungulate monitoring as part of our routine field operations.
2. **Invasive Plant Control** – The goal of this program is to control high priority invasive plants in the preserve, and prevent the introduction and spread of problem weeds to areas where they are not currently established. As part of our routine management program, the Conservancy will survey for and maintain maps of habitat-modifying weeds and initiate control at strategic locations.
3. **Resource Monitoring** – Monitoring is imperative to providing data that can be used to guide management programs at Ka'ū Preserve. Our goal is to monitor changes in the integrity of the ecosystems in and around the preserve and to determine whether critical

threats to those ecosystems are increasing or decreasing. We will use these data to gauge the effectiveness of our conservation strategies.

4. **Rare Species Protection and Research** – To date, five rare plant species and two rare bird species have been observed in Ka‘ū Preserve based on data provided by the Hawai‘i Natural Heritage Program (HINHP) and observations by staff. Additional rare species reported from adjacent lands and similar habitats are likely to be found in Ka‘ū Preserve with future surveys. Our goal is to prevent the extirpation of rare species in the preserve and to encourage research, predator control, and captive propagation of rare plant and bird species. Protecting habitat essential to the majority of the preserve's native plants and animals will be our primary protection strategy. We will also assess threats to the rarest species and take measures to protect them, as needed. Staff will also search for rare plant populations during routine management activities, and rare species maps will be updated on a periodic basis.
5. **Community Outreach** – The main objective of our outreach program is to increase awareness of Ka‘ū Preserve, the Ka‘ū watershed and native ecosystems, their importance, threats, and efforts to protect them. More specifically, we seek to encourage and facilitate active participation and community pride among the residents of the Ka‘ū District in the effective conservation of this special resource. The key strategies for our public outreach include a variety of potential programs, including: environmental education, summer intern and youth employment, volunteer, guided trips, community meetings, and hiking and hunting programs.
6. **Watershed Partnership** – The Nature Conservancy is a member of, and our preserves are included within, the Three Mountain Alliance, an extension of the Ola‘a-Kīlauea Partnership. The members of this Alliance have initiated discussions about coordinating information gathering, management planning, community outreach, and on-the-ground conservation action. Our goal is to facilitate further development of the Three Mountain Alliance and help to implement initiatives that address top watershed, forest, and biodiversity threats.

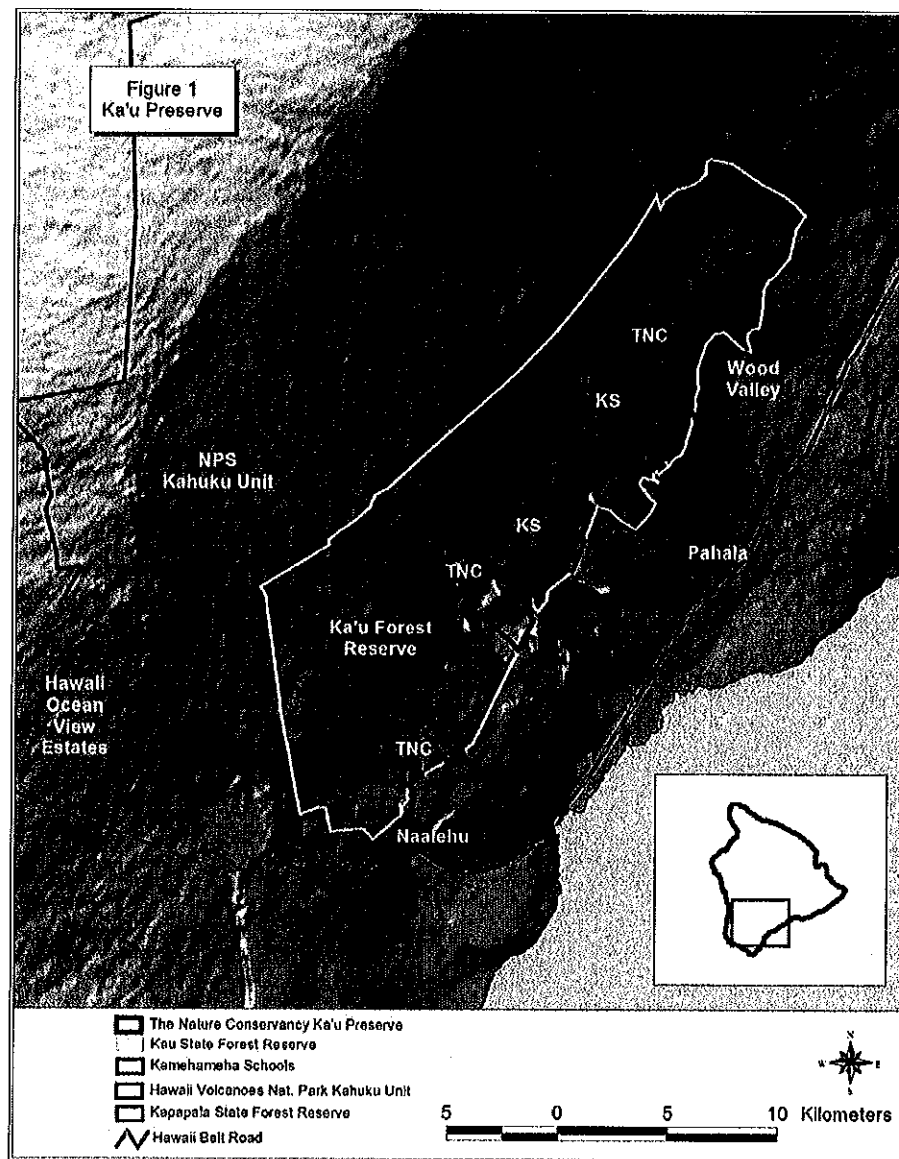
The State Department of Land and Natural Resources (DLNR), which administers the NAP program, will be kept apprised of our progress in the preserve through written reports and an annual inspection. Operational Plans and Progress Reports will be submitted annually (the Conservancy has adopted a July 1 – June 30 fiscal year). These documents will be available upon request to others who are interested.

The first section of this plan contains a brief overview of the native resources that are protected at the Ka‘ū Preserve. In the second section are management considerations that have shaped our programs. Finally, each management program is discussed in turn. Program goals are followed by an explanation of the management method we have chosen, and yearly objectives for each program from FY2007 through 2012 are also listed.

RESOURCES SUMMARY

General Setting

The Ka'ū Preserve (Figure 1) was established by The Nature Conservancy in 2002 to protect biologically rich and intact forest. It was purchased by the Conservancy from a subsidiary of C. Brewer & Co. Ltd. who had owned the lands for over 100 years. It is contiguous to and within the external boundaries of the State's Ka'ū Forest Reserve on the southeast flank of Mauna Loa volcano, up slope from the coastal agricultural area between Wai'ōhinu and Pāhala in the Ka'ū District of Hawai'i Island. The 3,511-acre Preserve, which includes four separate units, is positioned within one of the largest areas of intact forest land in the State, totaling 68,500 acres.



Native Natural Communities

There are four native-dominated natural communities in the Ka'ū Forest Reserve, and all four are also represented in Ka'ū Preserve:

- (1) Koa/'Ōhi'a Montane Mesic Forest is present at the highest elevation portion of the Keaīwa unit;
- (2) Koa/'Ōhi'a Montane Wet Forest covers the middle portion of the Keaīwa unit;
- (3) 'Ōhi'a Montane Wet Forest covers the lower portion of the Keaīwa unit and the upper portion of the Kaiholena unit; and
- (4) 'Ōhi'a Lowland Wet Forest covers the lower portion of the Kaiholena unit and all of the Kāhilipali and Kī'olokū units (Figure 2, Table 1).

The very high quality of the wet and mesic forest communities in Ka'ū provides a rare opportunity to implement management before it is too late or costly.

On Hawai'i, **Koa/'Ōhi'a Montane Mesic Forest** is the habitat of the endangered Hawaiian broadbean (*Vicia menziesii*) and a number of rare plant taxa, including members of the genera *Clermontia*, *Phyllostegia*, *Stenogyne*, and *Melicope*. This rare forest type is often important habitat for endangered forest birds. Protected examples of this community are in the Hakalau National Wildlife Refuge and Manukā Natural Area Reserve on Hawai'i, and the Kuia Natural Area Reserve on Kaua'i.

Koa/'Ōhi'a Montane Wet Forest occurs on the islands of Kaua'i, Maui, and Hawai'i and is not considered rare. This moderately imperiled forest type has a good representation of 'ōhi'a and are often rich in native forest birds and invertebrates.

'Ōhi'a Montane Wet Forest is one of the most widespread wet forest communities in the Hawaiian Islands. This community type is moderately imperiled, and some occurrences are known to include rare plants, birds, and invertebrates. It is often important habitat for endangered forest birds. The steep slopes of the Kaiholena unit contain a subtype of this community called Wet Cliff, dominated by a mix of ferns and shrubby 'ōhi'a.

In Ka'ū, the **'Ōhi'a Lowland Wet Forest** is floristically similar to the 'Ōhi'a Montane Wet Forest immediately above it in elevation. This community type is moderately imperiled and provides habitat for rare native plants. It is typically not important habitat for endangered forest birds on Hawai'i Island due to the presence of mosquitoes associated with its lower elevation. The lower portions of the Kāhilipali and Kī'olokū units contain a subtype of this community, **'Ōhi'a /Uluhe (*Metrosideros/Dicranopteris*) Fern Forest**, which is composed of a nearly continuous blanket of uluhe (*Dicranopteris linearis*) with emergent and widely spaced 'ōhi'a trees.

Figure 2 Natural Communities

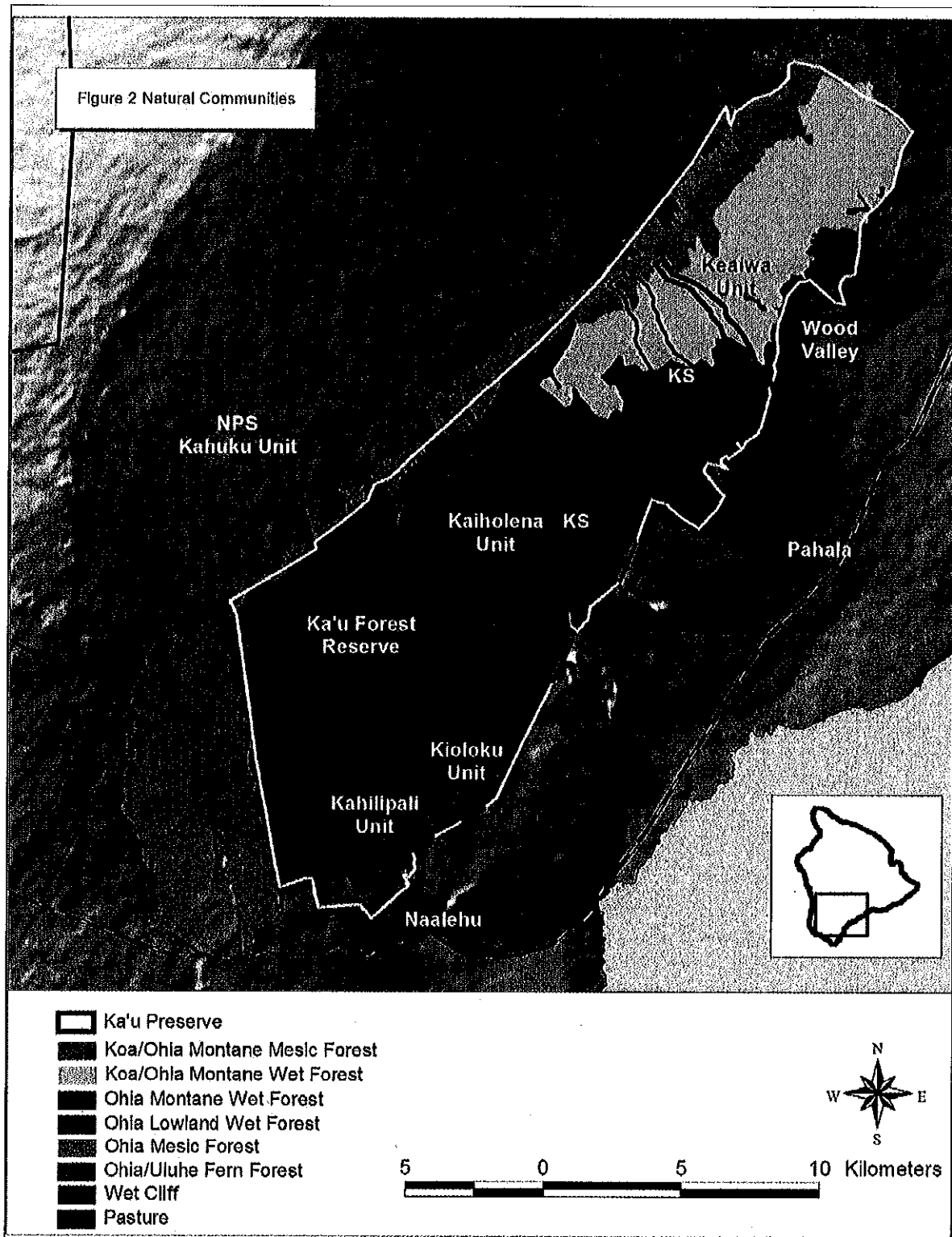


Table 1. Natural Communities of Ka‘ū Preserve

Natural Community (common and scientific names)	Heritage Global Rank*
Koa/‘Ōhi‘a Montane Mesic Forest <i>Acacia koa</i> / <i>Metrosideros polymorpha</i> Montane Mesic Forest	G1
Koa/‘Ōhi‘a Montane Wet Forest <i>Acacia koa</i> / <i>Metrosideros polymorpha</i> Montane Wet Forest	G3
‘Ōhi‘a Montane Wet Forest <i>Metrosideros polymorpha</i> Montane Wet Forest	G3
‘Ōhi‘a Lowland Wet Forest <i>Metrosideros polymorpha</i> Lowland Wet Forest	G3

* Key to Heritage Global Ranks:

G1 = Critically imperiled globally (typically 1-5 current occurrences).

G3 = Moderately imperiled globally or restricted in range (typically 21-100 current occurrences).

Native Flora

From a statewide perspective, the southeast portion of Mauna Loa (eastern side of the Southwest Rift Zone), is surpassed only by East Maui in the number of different types of ecosystems present. Considering all of its nine ecosystems, this region is home to more extant, endemic species of flowering plants (178 species) than any other region of Hawai‘i Island. In fact, its mesic and wet forest ecosystems alone support 153 endemic plant species. While Ka‘ū Preserve does not contain the full diversity of species found within the region, the majority of the lands are very high quality. A list of native plants that occur in the Kaiholena unit is now being developed (see Appendix 1 for a draft listing of native plants).

The mesic and wet forests of the Ka‘ū region are home to at least 12 known species of rare plants (Table 2 and Appendix 2). Six of these are endangered, two are candidates for listing as endangered, three are species of concern, and one has a restricted range.

Data for rare plants and animals in Ka‘ū come from widely-spaced survey transects, very few of which actually fall within the preserve. Much of the rest of the land, within and outside the preserve has not been surveyed but almost certainly harbors more rare elements.

Five rare plant species have been observed in Ka‘ū Preserve. Three species, *Cyanea tritomantha* (candidate), *Nothocestrum breviflorum* (listed endangered), and *Phyllostegia vestita* (species of concern) are recorded in the Natural Diversity Database. They were all reported within the Kaiholena unit: *C. tritomantha*, last observed in Kaiholena in 1912 and *P. vestita*, last observed in Kaiholena in 1961, have never been reported within the nearby Ka‘ū Forest Reserve. Two additional species have been observed in the Kaiholena unit by TNC staff: *Trematolobelia grandifolia* (species of concern) and *Lobelia hypoleuca* (restricted range). They do not appear on the map in Appendix 2 because they were found recently, after the map was made.

Many of the plants that occur on Conservancy lands in Ka‘ū are not listed in the State or Federal Register in any of the categories that may make them rare however, plants like *Strongylodon ruber*, *Charpentiera obovata*, and *Touchardia latifolia*, are rare on Hawai‘i Island and/or rare from a population standpoint and will be treated as such with regards to rare species management for this plan. Subpopulations of *Pritchardia lanigera* near Kaiholena were last observed in 1980 and were thought to be extirpated. However two small subpopulations were recently located by TNC staff working with local hunters. These subpopulations should be considered endangered.

Table 2. Rare Plants of Ka‘ū Preserve (or vicinity)

Species	Federal Status*	Heritage Global Rank**
<i>Asplenium fragile</i> var <i>insulare</i>	LE	G5T1
<i>Clermontia lindseyana</i>	LE	G1
<i>Cyanea stictophylla</i>	LE	G1
<i>Cyanea tritomantha</i>	C	G1
<i>Lobelia hypoleuca</i>	-	G3
<i>Melicope zahlbruckneri</i>	LE	G1
<i>Nothocestrum breviflorum</i>	LE	G1
<i>Phyllostegia floribunda</i>	C	G1
<i>Phyllostegia velutina</i>	LE	G1
<i>Phyllostegia vestita</i>	SOC	G2
<i>Pritchardia lanigera</i>	SOC	G1
<i>Trematolobelia grandifolia</i>	SOC	G2

* Key to Federal Status:

Listed Endangered (LE) = Taxa listed as endangered.

Candidate (C) = Taxa for which substantial information on biological vulnerability and threat(s) support proposals to list them as threatened or endangered.

Species of Concern (SOC) = Taxa for which available information meets the criteria for concern and the possibility to recommend as candidate.

** Key to Heritage Global Ranks:

G1 = Critically imperiled globally (typically 1-5 current occurrences).

G2 = Imperiled globally (typically 6-20 current occurrences).

G3 = Moderately imperiled globally or restricted in range (21-100 current occurrences).

G5 = Demonstrably widespread, abundant, and secure.

T1 = Subspecific taxa critically imperiled globally. 1-5 occurrences and/or fewer than 1,000 individuals remaining; or more abundant but facing extremely serious threats range-wide.

Native Terrestrial Fauna

One of the richest assemblages of endangered forest birds (e.g., Hawai‘i Creeper, Hawai‘i ‘Ākepa, ‘Akiapōlā‘au, ‘Io) inhabit the largely intact forests of Ka‘ū. Five endangered forest birds have been reported in the wet and mesic forests of Ka‘ū (Table 3 and Appendix 3). Of these, three have been reported within Ka‘ū Preserve: the ‘Io or Hawaiian Hawk, the Hawai‘i

‘Ākepa, and the Hawaiian Crow or ‘Alalā, historically found in Ka‘ū but now probably extirpated.

Two other rare bird species are likely to occur in the preserve, but more information is needed: ‘Akiapōlā‘au and the Hawai‘i Creeper.

Endangered Hawaiian hoary bats, ‘ōpe‘ape‘a, are also known to inhabit the wet montane forests of Ka‘ū and likely roost, forage, and breed in the preserve, but more information is needed (Theresa Menard, pers. comm.).

Few native invertebrates have been given endangered status, and are generally very poorly understood, but the intact natural communities of Ka‘ū no doubt include hundreds of native invertebrates, the majority of which are endemic to the archipelago, and several of which are likely endemic to the Ka‘ū region.

Table 3. Rare Vertebrates of Ka‘ū Preserve (or vicinity)

Species	Federal Status*	Heritage Global Rank**
<i>Buteo solitarius</i> (Hawaiian Hawk, ‘Io)	LE	G2
<i>Corvus hawaiiensis</i> (Hawaiian Crow, ‘Alalā)	LE	G1
<i>Hemignathus munroi</i> (‘Akiapōlā‘au)	LE	G1
<i>Lasiurus cinereus semotus</i> (Hawaiian hoary bat, ‘ōpe‘ape‘a)	LE	G5T2
<i>Loxops coccineus coccineus</i> (Hawai‘i ‘Ākepa)	LE	G2
<i>Oreomystis mana</i> (Hawai‘i Creeper)	LE	G2

* Key to Federal Status:

Listed Endangered (LE) = Taxa listed as endangered.

** Key to Heritage Global Ranks:

G1 = Critically imperiled globally (typically 1-5 current occurrences).

G2 = Species imperiled globally (typically 6-10 current occurrences).

G5 = Demonstrably widespread, abundant, and secure.

T2 = Subspecific taxa imperiled globally. 6-20 occurrences and/or 1,000-3,000 individuals remaining; or more abundant but facing serious threats range-wide.

MANAGEMENT

Management Considerations

1. Our primary management focus is to prevent degradation of the native forest by reducing feral ungulate damage, limiting the spread of non-native, habitat-modifying plants, and preventing the introduction of other invasive species. We are also committed to improving community outreach and to continue providing access as required by law for people who want to use the preserve in ways that will not degrade its natural resources.
2. The preserve is divided into four separate units spanning a distance of 12 miles. Each unit shares three boundaries with the State's Ka'ū Forest Reserve, and one boundary with a private landowner who recently purchased the properties from Ka'ū Agribusiness, a subsidiary of C. Brewer. As a result of sharing the southern (lowland) boundary with private agricultural lands, public access via unimproved roads is somewhat limited, and we carefully coordinate our management and interpretive activities with work in these adjacent agricultural areas.
3. Although the threat of fire is somewhat diminished due to the high level of precipitation on the Preserve (approximately 60-120 inches annually), the proximity of the units to paved roads increases the possibility that a fire could start either accidentally or intentionally and affect the Preserve, particularly after a period of drought. Our participation with the Three Mountain Alliance will include working on a Fire Initiative with the other Alliance members.
4. The recent acquisition of Kahuku Ranch by the National Park Service (NPS) creates a mosaic of Ka'ū lands, with four principal landowners, all sharing a mandate for conservation and management of Hawai'i's natural resources: The Nature Conservancy, NPS, the State Department of Land and Natural Resources, and Kamehameha Schools. This provides the foundation for collaborative management at the watershed level as an effective way to address shared management challenges and opportunities.
5. There is potential to provide additional public access to the Forest Reserve and the preserve at several points along their lower boundaries, as most access roads are not open to the public at this time. Roads that are currently used by the public to access Ka'ū watershed lands include: Hā'ao Springs Road, Mountain House Road and Lorenzo Road. Access into upper areas of the Forest Reserve is anticipated to improve with the acquisition of Kahuku Ranch by NPS. Access into the upper areas of the preserve is limited by difficult terrain and a lack of roads and trails, so helicopter access is necessary.
6. There is a high level of interest regarding forest management in Ka'ū from various groups of people living near the preserve. This provides a rationale for coordinated community outreach and functional partnerships that promote compatible uses of the forest (e.g., environmental education, recreation, native gathering, hunting, rare species conservation, etc.).

7. As provided by law, appropriate access to the preserve for traditional practice will help to mitigate the perception of decreased access. Three gates will be available for preserve access on the Kaiholena side and fence stepovers will be installed if needed, with locations to be determined in consultation with the community.

Figure 3. Ka'u Preserve Management Units

The map displays the Ka'u Preserve Management Units, which include Kahuku, Kealahou, Kealahou, Kealahou, Kealahou, and Kealahou. The units are outlined in black and labeled with their respective names. The map also shows the surrounding landscape, including roads, rivers, and the ocean. A scale bar at the bottom indicates distances of 5, 0, 5, and 10 miles. A north arrow is located in the bottom right corner.

Management Areas/Units

Ka'ū Preserve is divided into four separate units: Kāhilipali, Kī'olokū, Kaiholena, and Keaīwa (Figure 3).

1. The Kāhilipali unit is the smallest (169 acres) and westernmost unit, accessed via the 4wd Mountain House Road. The elevation ranges from approximately 2,400 to 2,640 ft. The annual precipitation is 2,000 mm (79 in). A portion of this unit is zoned Agriculture and the rest is zoned for Conservation (subzone: Resource). Most of the unit contains 'Ōhi'a Lowland Wet Forest, however the forest in the lower portion of the unit grades into the community subtype 'Ōhi'a /Uluhe Fern Forest. Portuguese Springs is located in the upper northeast corner, at the head of Alapa'i Gulch, which runs along the northeast boundary of the unit. A maintained pipeline diagonally traverses the middle of the unit providing a corridor for non-native invasive plants such as guinea grass (*Panicum maximum*), sourbush (*Pluchea carolinensis*) and bamboo orchid (*Arundina graminifolia*), and more serious weeds such as strawberry guava (*Psidium cattleianum*), Koster's curse (*Clidemia hirta*), and Christmas berry (*Schinus terebinthifolius*). Glorybush (*Tibouchina urvilleana*) occurs along the Mountain House Road.
2. The Kī'olokū unit is the next largest (211 acres) and is located approximately 1 mile north of the Kāhilipali unit. The elevation ranges from approximately 2,400 to 2,700 ft. The annual precipitation is 2,000 mm (79 in). The lower portion is accessed via ranch roads, while the upper elevation is accessed via the 4wd Mountain House Road. Waiaele Gulch runs along a portion of the northeast boundary of the unit. The forest, like the Kāhilipali unit, is mainly 'Ōhi'a Lowland Wet Forest, with some areas of 'Ōhi'a /Uluhe Fern Forest. Glorybush (*Tibouchina urvilleana*) occurs along the Mountain House Road, and weeds such as strawberry guava (*Psidium cattleianum*) and Koster's curse (*Clidemia hirta*) are present in the forest. This unit is zoned for Agriculture.
3. The Kaiholena unit is the largest (approximately 2,620 acres) and is centrally located 4 miles from the Kī'olokū unit and 6 miles from the Keaīwa unit. A pu'u (hill or mount), Kaiholena, rises sharply from its base elevation of 2,000 ft to a height of 3,723 ft and is geologically much older than the surrounding, more gently rolling Mauna Loa flows. Just northwest of the Pu'u Kaiholena, Pu'u Makaalia rises to a height of 4,240 ft. Hīlea Gulch runs between these two pu'u. Old Plantation Springs, a portion of whose water rights are held by the previous owner, is nestled in the southern folds of Pu'u Makaalia at approximately 3,500 ft. The annual precipitation is 2,000 mm (79 in) except for a wetter area on the south side of Pu'u Kaiholena which has 3,000 mm (118 in) annual precipitation. A portion of this unit is zoned Agriculture and the rest is zoned for Conservation (subzones: Protective and Resource).

Directly south of Pu'u Makaalia lies Pu'u One (3,220 ft elevation), on State land just outside of the Kaiholena unit boundary. Historically this pu'u was considered with the others as all one place. The western side of Pu'u One is accessed via a 4wd road that leads to a gauging station on one branch of Hīlea Gulch.

The forest in the lower portion of the Kaiholena unit is 'Ōhi'a Lowland Wet Forest, becoming 'Ōhi'a Montane Wet Forest at approximately 3,200 ft elevation. Five rare plants have been reported in this unit. Very few weeds have established in Kaiholena. Those present and still controllable include Japanese anemone (*Anemone hupehensis*), palm grass (*Setaria palmifolia*), and strawberry guava (*Psidium cattleianum*).

Tibouchina herbacea is present along the Pu'u One access road. There are 315 acres of former cane land at the base of the Pu'u Kaiholena which have been converted to pasture and are now leased by a local rancher for cattle grazing. An incipient population of silk oak (*Grevillea robusta*) occurs within the pasture.

4. The Keaīwa unit is the second largest (511 acres) and easternmost unit. Keaīwa Reservoir (on State land) lies at the base of the unit at approximately 3,000 ft elevation. From there the unit stretches mauka. A 6 km-long strip of land, at its widest point, the Keaīwa unit is only 570 m wide. Its northern boundary (5,700 ft) is approximately 1 km from the Kahuku unit of Hawai'i Volcanoes National Park. The annual precipitation in the lower portion of the unit is 3,000 mm (118 in), in the middle portion is 2,000 mm (79 in) and in the upper portion is 1,500 mm (59 in). Pi'ikea and Kā'ala'ala Gulches meander in and out of the Keaīwa unit. The uppermost portion of the unit (above 5,300 ft) contains Koa/'Ōhi'a Montane Mesic Forest (50 acres), while much of the rest of the unit consists of Koa/'Ōhi'a Montane Wet Forest, except for lower third of the site (below 4,000 ft) which is 'Ōhi'a Montane Wet Forest and the bottom 50 acres (below 3,400 ft) which are 'Ōhi'a Lowland Wet Forest. The endangered forest bird, Hawai'i 'Ākepa, has been reported in this unit, observed between 4,000 and 5,000 ft elevation in 1995. Several highly invasive plants occur near the Keaīwa Reservoir, including night-blooming jasmine (*Cestrum nocturnum*), Japanese anemone (*Anemone hupehensis*), and strawberry guava (*Psidium cattleianum*). The nearby village of Wood Valley (2 km away) is heavily infested with plume poppy (*Bocconia frutescens*), and the community there is also in the process of eradicating an incipient population of coqui frogs. This unit is zoned for Conservation (subzone: Protective).

Management Programs

Program 1: Ungulate Control

Program Goal: To eliminate ungulates (cattle, pigs, sheep, and goats) from the Kaiholena Unit by 2012 and to reduce ungulate damage in the Kāhilipali, Kī'olokū, and Keaīwa Units.

This program represents an estimated 44% of the overall effort and budget in this long range management plan.

Preliminary measurements on survey transects show extremely high levels of ground disturbance by pigs: 100% of 30 stations in the Kaiholena Unit showed pig activity. Additional surveys conducted in the Keaīwa Unit and parts of the Ka'ū Forest Reserve show extensive, severe ground disturbance by pig activity. Diminished diversity of groundcover and understory species has been observed over large areas. In some severely impacted parts of the forest common groundcover and understory plants are persisting only epiphytically upon trees and tree ferns. Weed surveys conducted in the Kaiholena Unit show a direct correlation between presence of weed species and pig activity. High levels of ground disturbance, coupled with reduced groundcover, have led to an increase in water runoff, sheet erosion, and stream bank collapse. There is also a very high likelihood of wild cattle, Mouflon sheep, and feral goats in the vicinity.

Of the four Ka'ū Preserve units, the largest expanse of intact, high-quality native lowland wet forest and most significant biological resources (rare plants and high native diversity) occur in the roughly 2,600-acre Kaiholena Unit. Therefore the best and most cost-effective alternative is to enclose the Kaiholena Unit by incrementally building fences and to utilize trapping and hunting to bring the number of feral ungulates in the enclosures to zero as quickly as possible.

Construction of the first proposed fence in the Kaiholena Unit is being planned for Year 1. The proposed alignment will enclose 1,080 acres including Pu'u Kaiholena, allowing the now uncommon native plants that persist only in the steep gullies and folds of the pu'u to expand their coverage. It will also protect the culturally significant Iholena Banana patch, and, once ungulates are removed, this enclosure will serve as a reintroduction site for several rare plants.

Surveys will be conducted in Year 3 to find the optimum alignments for additional fences in the Kaiholena Unit, our main objective being to remove ungulates from Pu'u Makaalia. If proposed in the future, subsequent additional fenced areas that would add significantly to the length or amount of area protected, will require a revision and amendment to the current EA, and a Conservation District Use Permit application (if they are proposed to be constructed within the Conservation Zone) and therefore would be subject to public review.

Pig traps made from hog panels will be placed on the perimeter of the unit. The traps will be baited with macadamia nuts and checked frequently. This technique has proved extremely successful in our Kona Hema Preserve where over 400 pigs have been removed from the 1,800 acre Kapu'a unit over the last 3 years. Supplemental hunting will take place by staff and/or volunteers. Permanent ungulate activity monitoring transects have been installed in the

Kaiholena unit and will be monitored when the fence is constructed and every 6 months after that for detection of changes in ungulate activity level.

The estimated cost of this fence is approximately \$200,000 and will be subcontracted out. Funding for fence construction has been secured through the USDA Natural Resources Conservation Service's Wildlife Habitat Incentives Program (NRCS WHIP), which will provide up to 75% of the cost. The rest of the cost will be covered by TNC and a portion will be matched with this NAPP request.

Relying on public hunting, aerial shooting, staff hunts, and other means to reduce feral animal populations instead of fenced enclosures is not a feasible alternative because as long as the Kaiholena Unit remains unfenced, feral animals will continue to enter the area from adjacent lands. Animal removal would have to continue indefinitely. This long-term control program would be expensive and unpopular, and make the goal of natural resource protection and rare plant reintroduction impossible. The best long-term solution is therefore to enclose the Kaiholena Unit, and remove all feral ungulates as quickly as possible.

However, constructing fences that enclose all four Ka'ū Preserve units is not cost-effective or feasible at the present time. The Kāhilipali and Kī'olokū units are isolated, small (169 and 211 acres, respectively), and somewhat degraded by invasive plants. Therefore fencing these units would not result in a significant enough contribution to resource protection from ungulates to justify the expenditure of funds that fencing would require. The Keaīwa unit (511 acres) is a "spaghetti" parcel with elongated dimensions: 6 km long by 500 m wide. Although significant biological resources are present, particularly in the upper elevation, we are not proposing to construct fences in this unit at the present time. However, the acceptance of this 6-year plan does not preclude the re-consideration of this possibility in the future.

In these unfenced units, as well as the unfenced portions of the Kaiholena unit our objective is to reduce ungulate damage by enhancing hunter access (by installing signs, check-in stations, etc.) and encouraging public hunting in these areas through outreach. A back-country camp consisting of two canvas tent cabins is being proposed in the upper reaches of the Kaiholena unit. This will enable staff to have a dry place to camp overnight while conducting surveys, monitoring, and constructing fence. These tents will also be available for hunters to use. Permanent ungulate activity monitoring transects have been installed in these units and will be monitored periodically for detection of changes in ungulate activity level.

Additionally, in cooperation with the NPS, the State and Kamehameha Schools, a site survey for optimum large-scale ungulate fencing will be conducted (see Watershed Partnership Program). Strategies to remove ungulates from remote areas and to enhance ungulate hunter access will be identified and implemented.

Ungulate Control Program Activities

Year 1 (FY2007)

- Construct fence (Figure 4)
- Make existing cattle fence ungulate-proof

- Construct back-country camp (tent cabins, water catchment) and LZ's
- Begin ungulate removal
- Identify/implement strategies to enhance ungulate hunter access

Year 2 (FY2008)

- Continue ungulate removal
- Maintain fences and signs
- Assist NPS/State in site survey for optimum ungulate fencing

Years 3-6 (FY2009 – FY2012)

- Continue ungulate removal
- Maintain fences and signs
- Survey for optimum placement of additional fences in Kaiholena unit

Fence specifications: The ungulate control fence will be 33,128 linear feet in length (elevation 2,000 to 3,400 ft) and will enclose 1,080 acres (Figure 4). The fence alignment may change slightly, depending on the terrain and avoid sensitive resources. Where the fence crosses the road, a gate will be installed for vehicle access. Three additional gates will be available for preserve access on the Kaiholena side. Fence stepovers will be installed if needed for foot access, with locations to be determined in consultation with the community. Roughly 30% of the proposed fence alignment follows the edge of a pasture (11,165 ft), another 20% follows an existing 4WD road (6,749 ft) so minimal disturbance to vegetation will be required to install and maintain these sections. For the more remote sections, a corridor 4 ft. wide will be brushed to install the fence for a distance of 15,214 ft. The drainage on the existing 4WD road will be corrected and maintained in order to keep erosion in check.

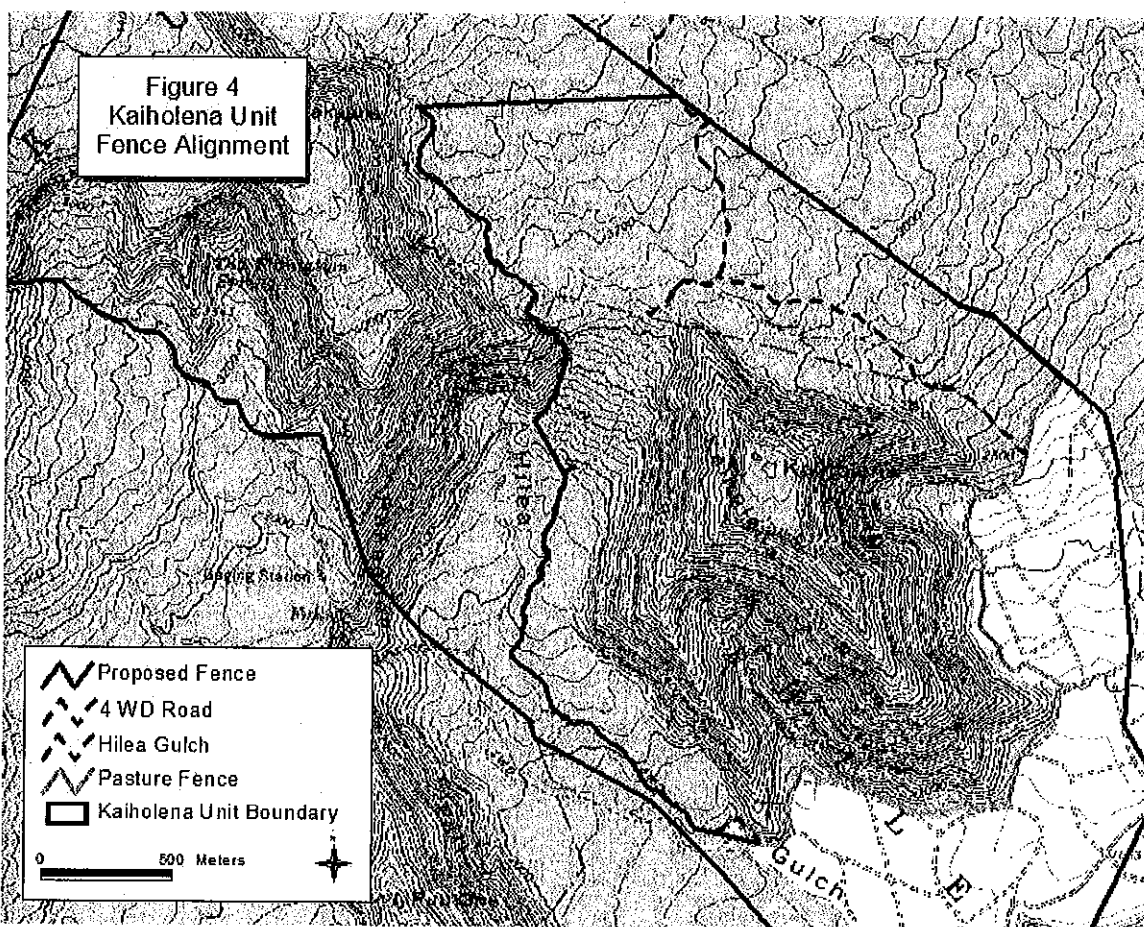
The ungulate fence will be constructed using 39-inch high tensile Bezinol-treated hogwire (1047-6-12-1/2). 6.5 ft tall galvanize-dipped T-posts will be installed 10-12 ft apart and driven to a uniform depth (5 ft remaining above ground). Hogwire will be installed as close to the ground surface as possible (less than 2 inches) and deadmen will be used when necessary to anchor the wire to the ground. This fence is not designed to be 100% effective at prohibiting Mouflon sheep, however we have never observed sheep in this very wet forest. It is possible that sheep could eventually move into the area, particularly as pressure from hunting in the NPS Kahuku Unit above increases. Our fence design for the Makaalia subunit will take this into consideration when we propose the upper elevation alignment at a later date.

Sign specifications: Approximately 20 signs will be installed throughout the preserve along commonly used trails. These signs will detail preserves rules, give safety precautions, promote wildfire awareness, and identify restoration sites and management activities. They will mention that funding for this project comes through the State's Natural Area Partnership Program. Sign materials may vary from metal, wood, or plastic. Pursuant to Hawai'i Administrative Rule 13-5-22, no sign shall exceed 12 square feet in area and shall be non-illuminated. All signs will be self-supporting and less than or equal to 8 feet above finished grade.

Back-country camp specifications: Two 10 x 12' canvas tent cabins will be erected upon wood-framed platforms in a remote area of the Kaiholena Unit (in the vicinity of Nanuamaia) to

facilitate fence construction and hunting. A small (less than 150 sq. ft.) corrugated fiberglass or tin water catchment roof will be constructed in the vicinity of the cabins and a 50-250 gallon UV resistant plastic tank will be set below the catchment surface. All materials for the catchment system as well as the fences will be flown in by helicopter due to the elevation (4,000 ft) and steep terrain. In addition, a small shelter will be constructed on the existing 4WD road near the Ka'ū Forest Reserve boundary to facilitate hunting in remote areas.

Landing zone specifications: Five to ten landing zones will be established in the upper reaches of the forest to assist conservation actions and for fire control and rescue. No single landing zone will exceed 100 sq ft. Landing zones will primarily be located in open and/or grassy locations. If vegetation clearing is required, it will be done with small motorized or hand tools and will not involve bulldozing, grading/grubbing, or ground disturbance. In some instances, it may be necessary to lay wood boards on the LZ for the helicopter skids. All landing zones on State land will be selected after consultation with DOFAW.



Program 2: Invasive Plant Control

Program Goal: To control high priority invasive plants in the preserve, and prevent the introduction and spread of problem weeds to core areas of native habitat where they are not currently established.

This program represents an estimated 30% of the overall effort and budget in this long range management plan.

Habitat-modifying weeds are non-native plants that have demonstrated the ability to suppress regeneration of and/or displace native vegetation. Many weeds become established when an area is disturbed by ungulates, which may also carry and spread seeds. Elimination of ungulates, therefore, may be one of the most effective means of controlling the introduction and spread of many habitat-modifying weeds in the preserve. To complement these efforts, our invasive plant control program focuses on removing habitat-modifying weeds that are already established in the preserve.

The presence of several serious invasive plant species both on and in the vicinity of the preserve has been identified (Table 4). We are currently half way through the process of conducting a systematic, preserve-wide inventory, survey and mapping effort to identify the location and extent of weed infestations. Priority weed maps and a species- and unit-specific management plan are expected to be in place by October 2006. Management efforts will be prioritized according to controllability, proximity to sensitive core areas of the preserve, and along corridors leading into the preserve.

Initial results of the weed survey show a large infestation of strawberry guava and *Clidemia* in the Lower Hilea subunit of the Kaiholena unit. This infestation requires immediate attention. Work in Year 1 will involve determining the perimeter of the infestation and beginning control work (using herbicide) on the outer edge of the infestation and working towards the core. A large infestation of *Tibouchina urvilleana* is located in the Kī'olokū unit. An initial aerial survey has been conducted and will be followed up with ground surveys. Testing different methods of control in attempting to control the perimeter will be addressed in Year 1. Greater detail of these actions will be forthcoming in the weed management plan.

Where possible, we will use an Integrated Pest Management (IPM) approach to weed control. This will include manual methods, mechanical methods (including small motorized tools like chainsaws and weed-eaters) and/or herbicide use, and perhaps assisting with biological control initiatives. Cultural control aspects (minimizing soil disturbance and new pest plant introductions) will be incorporated into routine field operations. Herbicides will be used when they are the most effective method for achieving our long-term goals.

Staff and visitors will follow strict procedures to prevent the inadvertent introduction of invasive plants while working or hiking in the preserve. Our invasive species prevention protocol calls for inspecting all clothing and equipment for seeds before entering the preserve. We will remain vigilant in our search for incipient populations of invasive plants. Species such as fireweed

(*Senecio madagascariensis*), Himalayan raspberry (*Rubus ellipticus*), cat's claw (*Caesalpinia decapetala*), kahili ginger (*Hedychium gardnerianum*), and plume poppy (*Bocconia frutescens*) are found nearby but do not occur on the preserve. *Miconia calvescens*, which has extensively invaded Hilo and Puna up to 3,500 ft elevation, has not been reported in Ka'ū.

Invasive species other than plants (e.g. coqui frogs, gall wasps, koa wilt, etc.) will be diligently surveyed for so that they can be detected as early as possible and responded to rapidly before they are able to gain a foothold. Rats will be controlled on a site-specific basis, as needed for the protection of rare plants.

Table 4. Known Pest Plants of Ka'ū Preserve

Common Name	Scientific Name
Christmas berry	<i>Schinus terebinthifolius</i>
Glorybush	<i>Tibouchina urvilleana</i>
Japanese anemone	<i>Anemone hupehensis</i>
Night-blooming jasmine	<i>Cestrum nocturnum</i>
Palm grass	<i>Setaria palmifolia</i>
Silk oak	<i>Grevillea robusta</i>
Strawberry guava	<i>Psidium cattleianum</i>
Common guava	<i>Psidium guajava</i>

Invasive Plant Control Program Activities

Year 1 (FY2007)

- Create priority weed maps
- Prioritize the most serious invasive weeds and geographic areas
- Develop species- and unit-specific management goals and begin adaptive management of highest priority species
- Participate as a member of the Big Island Invasive Species Committee (BIISC)
- Continue strict inspection and cleaning procedures to prevent introduction of weed species not currently in the preserve

Years 2-6 (FY2008 – FY2012)

- Maintain priority weed maps
- Monitor effectiveness of treatments
- Continue adaptive management of weeds and adjust strategies as needed based on monitoring results
- Continue to participate as a member of BIISC
- Continue strict inspection and cleaning procedures to prevent introduction of weed species not currently in the preserve

Program 3: Resource Monitoring

Program Goal: To monitor changes in the integrity of the ecosystems in and around the preserve; to determine whether critical threats to those ecosystems are increasing or decreasing; and ultimately to gauge the effectiveness of our conservation strategies.

This program represents an estimated 2% of the overall effort and budget in this long range management plan.

As an organization, The Nature Conservancy is trying to develop a more consistent and rigorous approach to evaluating the success or failure of our conservation actions. We have established a preliminary framework for assessing the effectiveness of our conservation actions based on the level of critical threats and on several key characteristics of the native ecosystems most greatly affected by them.

At Ka'ū Preserve and vicinity, we plan to monitor critical threats as above by tracking changes in: (1) ungulate activity and (2) the extent of habitat-modifying weeds. In addition to threat monitoring, we propose to track changes in five attributes of the native vegetation: (1) extent of ecosystem or community type; (2) adjacent land use patterns to native communities; (3) canopy condition; (4) understory condition; and (5) diversity of indicator plant species. In particular, we propose to measure the indicators in Table 5.

Ungulate activity levels will be measured periodically on transects as discussed previously. The number, location, and sampling scheme for these transects will be determined in Year 1. Data collected on these transects provide an index of ungulate activity and should indicate the level of success of ungulate removal efforts. In addition, field staff will also create activity maps from field observations showing the presence of ungulate sign whenever it is detected. This information will direct our ungulate removal efforts where they are needed most.

High priority invasive plant species will be mapped opportunistically during all field operations and systematically when needed. Treated populations will be monitored to determine effectiveness of treatments.

Ecosystem extent, adjacent land use patterns, and canopy condition will be assessed through analysis of aerial imagery and/or maps produced. Some of these data will be available through the Hawai'i GAP project and some will be interpreted separately because of the coarse resolution in that effort. The frequency and precise methodology will be determined during first several years of the implementation of the management plan.

Vegetation understory and diversity will be assessed using ground-based methods. This monitoring may coincide with ungulate monitoring across landscape transects, or may entail other sampling methods. Specific sampling schemes, frequency of monitoring, and data collection methods will be determined during the first several years of the implementation of the management plan. Pilot studies at other Conservancy sites (e.g., East Moloka'i) will help to inform the development of this monitoring component.

In addition, we will continue to work with the Division of Forestry and Wildlife (DOFAW) to monitor forest birds according to the agency's statewide schedule (i.e. every 5 years or so). The last Ka'ū bird census was in FY2002. The bird data are maintained and analyzed by the USGS Biological Resources Division. Conservancy staff and cooperators will also document incidental observations of rare birds observed while in the preserve.

Table 5. Planned Monitoring Framework for Ka'ū Preserve and Vicinity

<u>Threat Factors</u>	<u>Indicators</u>
Ungulate activity	<ul style="list-style-type: none"> • Frequency of ungulate sign
Extent of habitat-modifying weeds	<ul style="list-style-type: none"> • Extent of specific weed species
<u>Key Vegetation Attributes</u>	
Extent of ecosystem or natural community	<ul style="list-style-type: none"> • Acres of ecosystem or natural community
Adjacent land use	<ul style="list-style-type: none"> • Percentage of ecosystem boundary adjacent to lands managed for threat reduction or biodiversity conservation
Vegetation canopy condition	<ul style="list-style-type: none"> • Percentage of native canopy cover
Vegetation understory condition	<ul style="list-style-type: none"> • Percentage of native vegetation cover in understory • Percentage of native vegetation cover in ground layer
Diversity of indicator plant species	<ul style="list-style-type: none"> • Percentage and frequency of native, indicator plant species in understory and ground layer

Resource Monitoring Program Activities

Year 1 (FY2007)

- Establish ungulate monitoring transects in all four management units and establish baseline conditions
- Initiate weed mapping and establish baseline conditions of highest priority weeds
- Determine methods for monitoring efficacy of weed treatments
- Determine vegetation monitoring methodology

Year 2 (FY2008)

- Continue ungulate and weed monitoring
- Analyze threat data and adjust management actions as needed
- Determine and/or implement vegetation monitoring as necessary

Year 3 (FY2009)

- Continue ungulate and weed monitoring
- Analyze threat data and adjust management actions as needed
- Determine and/or implement vegetation monitoring as necessary
- Develop and implement a research strategy in concert with the US Geological Survey (USGS) and the University of Hawai'i (UH)

Years 4-6 (FY2010-FY2012)

- Continue ungulate and weed monitoring
- Analyze threat data and adjust management actions as needed
- Continue vegetation monitoring as necessary
- Continue implementing a research strategy in concert with USGS and UH
- Facilitate Forest Bird Surveys, following DOFAW's schedule

Program 4: Rare Species Protection and Enhancement

Program Goal: To prevent the extirpation of rare species in the preserve, and to encourage research, predator control, and captive propagation of rare plant and bird species.

This program represents an estimated 9% of the overall effort and budget in this long range management plan.

To date, five rare plant species and two rare bird species have been observed in Ka'ū Preserve (Tables 2 and 3). The Nature Conservancy uses data compiled by the Hawai'i Natural Heritage Program to identify rare taxa and uses its definition of rare: "species that exist in fewer than 20 populations worldwide." Additional rare species reported from adjacent lands and similar habitats are likely to be found in Ka'ū Preserve with future surveys.

Protecting ecosystems essential to the majority of the preserve's native plants and animals will be our primary management strategy. Our ungulate and weed control programs are integral to the protection of these ecosystems and rare species. In addition, we will supplement our understanding of the types and ranges of rare plants and animals with surveys to locate other rare species and assess their status, and to document all incidental observations of rare plants, birds, bats, and invertebrates while in the preserve. We will encourage research and provide logistical support to partners interested in specific rare species research and protection efforts.

Rare plant surveys will be conducted by subcontract in Years 1 & 2. Rare species protocols will be implemented, including: securing seed collection permits, working with the Volcano Rare Plant Nursery to deliver any seeds collected for future use (either by TNC or by the State for future outplanting in the same general area). A portion of the NAPP funds will be used to support the Rare Plant Nursery to offset their expenses in maintaining and propagating any collected seeds.

TNC Field Representative, Jon Giffin, has begun working with volunteers to conduct native invertebrate surveys.

Fencing will be installed as needed to protect populations of rare plants from ungulates. Rat control will be conducted as needed.

Rare Species Program Activities

Year 1 (FY2007)

- Conduct rare plant surveys in Kaiholena and Kāhilipali units
- Implement rare species protocols
- Conduct native invertebrate surveys

Year 2 (FY2008)

- Conduct rare plant surveys in Keaīwa and Kī'olokū units
- Continue implementing rare species protocols
- Continue native invertebrate surveys

Years 3-6 (FY2009 – FY2012)

- Protect and monitor rare plant populations
- Rare plant enhancement plans may include small enclosure fences of less than 10 acres around endangered species (see Ungulate Program for fence specifications)

Program 5: Community Outreach

Program Goal: To build Ka'ū community understanding and support for the preservation of Ka'ū's native forests, and enlist volunteer assistance for preserve management.

This program represents an estimated 15% of the overall effort and budget in this long range management plan.

The main objective of our outreach program is to increase awareness of Ka'ū Preserve, the Ka'ū watershed and native ecosystems, their importance, threats, and efforts to protect them. More specifically, we seek to encourage and facilitate active participation and community pride among the residents of the Ka'ū District in the effective conservation of this special resource. The key strategies for our public outreach work include a wide variety of programs, including: environmental education, summer intern and youth employment, volunteer, guided trips, community meetings, and hiking and hunting programs, and we will explore the possibilities of campsites.

An important focus will be on the children of Ka'ū (elementary and high school), the adults of the community, and community leaders. Preliminary discussions with principals and teachers at Pāhala and Na'alehu schools have occurred and strategies to implement on-site educational

programs are being explored. An interpretive nature trail is being developed in the Kaiholena unit. Field activities will combine a mix of conservation projects and educational opportunities. Conservation projects will include trail construction and maintenance, invasive plant control, fencing, creation of demonstration plots, and biological monitoring. Educational activities will address a wide variety of land management, cultural history, and natural history topics.

Community Outreach Program Activities

Year 1 (FY2007)

- Initiate a community outreach and volunteer program

Year 2 (FY2008)

- Continue community outreach and volunteer program
- Implement community-based environmental education program at Kaiholena

Years 3-6 (FY2009 – FY2012)

- Continue community outreach and volunteer program
- Continue community-based environmental education program at Kaiholena
- Expand the environmental education program to other Conservancy parcels and to other landowners in the region

Program 6: Watershed Partnership

Program Goal: To assist the long-term effective management of the native ecosystems of the Ka'ū region by participating in the Three Mountain Alliance, a coordinated partnership of landowners and other partners.

The 'Ōla'a-Kīlauea Conservation Partnership recently expanded to nearly 900,000 acres and is now known as the Three Mountain Partnership. With the recent acquisition of the Kahuku Ranch, four landowners are responsible for managing nearly 250,000 acres of contiguous lands in the Ka'ū region (the National Park Service, the State of Hawai'i, The Nature Conservancy, and Kamehameha Schools). These landowners and additional partners (*e.g.*, U.S. Geological Survey, U.S. Forest Service, U.S. Fish and Wildlife Service, etc.), have initiated discussions about the need for a coordinated approach to information gathering, management planning, and community outreach. By participating in a watershed partnership, the Conservancy is reducing the threats to Ka'ū Preserve while leveraging funding by having partners.

The top three landscape scale management issues chosen by the Alliance to coordinate efforts on first are: feral cattle, fire, and weeds. A proposal for funding the development of a weed management plan has been submitted to the National Fish and Wildlife Foundation. Discussions about strategic ungulate fencing across the landscape have been initiated.

The Three Mountain Alliance Fire Working Group met on October 20, 2005. It was agreed that instead of developing a separate Fire Working Group for the Alliance, it would be better to join and participate with the Big Island Wildfire Coordinating Group (BIGWIG) and to encourage other landowners to participate. This is a better venue for communication because fire response agencies are all represented, including DOFAW and the County of Hawai'i. TNC will be presenting fire planning information to BIGWIG at a future meeting. It was further stressed that fire pre-suppression planning is the most important Alliance role, including: identifying high priority areas and access routes, mapping fuels/fire history, implementing fuels reduction projects, conducting community awareness/education, and assisting landowners with development of fire plans.

Some additional coordinated activities being undertaken by the Three Mountain Alliance are to:

- Define a planning boundary for the watershed partnership,
- Map the physical features and land ownership in the region,
- Determine the need/opportunity for additional partners,
- Develop and sign a Memorandum of Agreement,
- Develop a conservation or watershed management plan,
- Identify and assess primary threats to biological and cultural resources, and
- Initiate a coordinated community outreach program to identify issues and concerns relating to resource management and public use opportunities within the project area.

Funding for these and other coordinated activities, as well as funding for a fulltime TNC Field Representative position for Ka'ū will be secured through other, more appropriate, programs such as the Watershed Partnership Program, rather than the NAPP. Therefore we are not requesting any funding for our Alliance participation in this NAPP request.

As mentioned in the Ungulate Control Program description above, TNC also intends to increase public access to allow for public hunting. In support of the overall regional management, there would also be increased access to Ka'ū for DOFAW management of the Ka'ū Forest Reserve (e.g. access along the roads to the base of Pu'u One (Kaiholena unit), and access through the Kī'olokū and Kāhīlipali units along the Mountain House Trail.

Watershed Partnership Program Activities

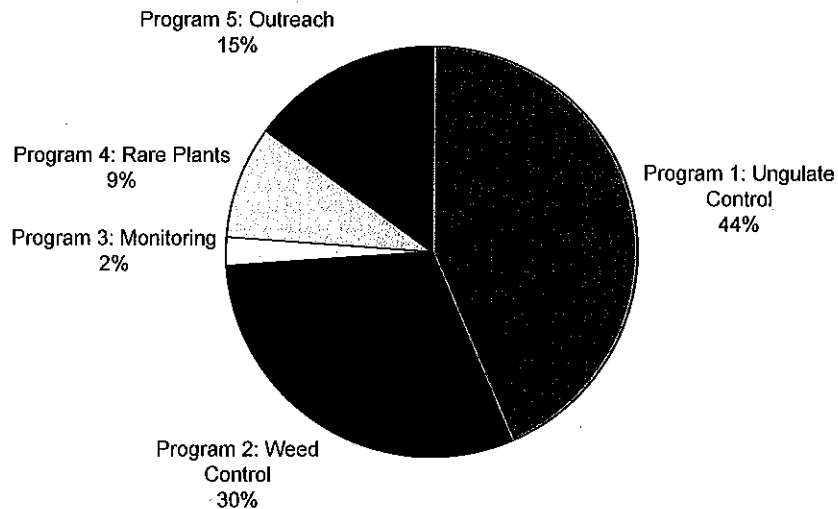
Year 1 (FY2007)

- Continue to help facilitate the development of the Three Mountain Alliance

Year 2 – 6 (FY2008 – FY2012)

- Support priority management activities developed by the Three Mountain Alliance

NAPP Ka'u FY07-FY12 Effort/Budget by Program



BUDGET SUMMARY

The following summary and table summarize the six-year budget for Ka'ū Preserve. Through the NAP program, the state pays two-thirds of the management costs outlined in this long-range plan.

Personnel:

This NAPP request will cover a portion of the costs of the Hawai'i Island Program staff that will have responsibilities in implementing the management plan. One or two seasonal interns may be hired to assist in implementing the community outreach and environmental education programs in Ka'ū as the budget allows and project needs warrant.

The Personnel line item includes:

A combined effort of Hawai'i Island Program staff equal to 2.5 FTE.

The Nature Conservancy's currently negotiated (annually with our federal cognizant agency) fringe benefit rate will accrue on all salary/wage costs. The FY07 negotiated rate is 40% for all regular staff and 12% for all temporary staff. These rates are subject to slight change each year.

Technical and annual planning support is also provided by the Honolulu office of the Conservancy. In particular, the Conservation Programs Director, Conservation Programs

Coordinator, Conservation Planner, Senior Scientist, and other island resource staff help prepare annual plans and reports, develop and implement monitoring and research programs, and establish interpretive and intern programs at the preserve. As budget and needs allow, these support staff members may charge a small portion of their time to this project

Supplies and Equipment:

FY07	Various office and project related supplies and expenses	\$6,200
	One computer / part of a vehicle	\$6,600
FY08	Various office and project related supplies and expenses	\$11,000
FY09	Various office and project related supplies and expenses	\$18,300
FY10	Various office and project related supplies and expenses	\$18,000
	One computer	\$1,500
	25% of one vehicle	\$10,000
FY11	Various office and project related supplies and expenses	\$18,000
FY12	Various office and project related supplies and expenses	\$18,000

Travel:

A travel budget of \$4,000 has been budgeted each year (\$2,000 for FY07) to cover staff inter-island travel for workshops, training, staff meetings; one mainland trip for 1 staff member to attend a workshop, and mileage.

Additional funds for travel have been budgeted each year to cover helicopter expenses as follows:

FY07 - \$6,200
FY08 - \$17,500
FY09 - \$14,000
FY10 - \$13,500
FY11 - \$13,500
FY12 - \$13,500

Subcontracts:

\$3,000 for a Rare Plant Survey subcontract has been budgeted in the first two years of this contract (FY07 and FY08).

Other:

\$5,000 has been budgeted each year (\$2,000 for FY07) to cover miscellaneous project related expenses like communications, printing and photo, training fees, and insurance.

Overhead:

The allowable overhead rate of 10% on NAPP projects has been included on all costs.

Budget Table

Ka'ū NAPP							
	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	TOTAL
Labor and Fringe	56,486	117,483	122,214	127,097	132,172	137,445	692,897
Supplies/Equipment	12,800	11,000	18,300	29,500	18,000	18,000	107,600
Travel (includes helicopter)	8,200	31,000	18,000	17,500	17,500	17,500	109,700
Subcontracts	3,000	3,000	-	-	-	-	6,000
Other	2,000	5,000	5,000	5,000	5,000	5,000	27,000
Subtotal	82,486	167,483	163,514	179,097	172,672	177,945	943,197
Overhead	8,249	16,748	16,351	17,910	17,267	17,794	94,319
TOTAL	90,735	184,231	179,865	197,007	189,939	195,739	1,037,516
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
Ka'ū Budget	90,735	184,231	179,865	197,007	189,939	195,739	1,037,516
Private Match (1/3 of total)	30,245	61,410	59,955	65,669	63,313	65,246	345,838
TOTAL NAPP REQUEST (2/3)	60,490	122,821	119,910	131,338	126,626	130,493	691,678

Appendix 1. Draft List of Native Plants of the Kaiholena Unit

Scientific Name	Hawaiian / Common Name
<i>Adenophorus tripinnatifidus</i>	Wahine-Noho-Mauna
<i>Alyxia oliviformis</i>	Maile
<i>Antidesma platphyllum</i>	Akole
<i>Asplenium contiguum</i>	N/A
<i>Asplenium lobulatum</i>	Pi'i-Lau-Manamana
<i>Asplenium unilaterale</i>	Pamoho
<i>Astelia menziesiana</i>	Pa'inui
<i>Athyrium microphyllum</i>	Akole
<i>Broussaisia arguta</i>	Kanawau
<i>Cheirodendron trygynum</i>	Olapa
<i>Cibotium glaucom</i>	Hapu'u Pulu
<i>Cibotium hawaiiense</i>	Hapu'u Meu
<i>Cibotium menziesii</i>	Hapu'u 'I'i
<i>Clermontia hawaiiensis</i>	Oha Kepau
<i>Clermontia montis-loa</i>	Oha Wai
<i>Clermontia parviflora</i>	Oha Wai
<i>Cocculus trilobus</i>	Huehue
<i>Coniogramme pilosa</i>	Lo'olu (Fern)
<i>Coprosma ochracea</i>	Pilo
<i>Coprosma rhynchocarpa</i>	Pilo
<i>Cyrtandra lysiosepala</i>	Ha'iwale
<i>Cyrtandra platyphylla</i>	Ilihia
<i>Dicranopteris linearis</i>	Uluhe
<i>Diplazium sandwichianum</i>	Hoi'o
<i>Dodonea viscosa</i>	A'ali'i
<i>Elaphoglossum crassifolium</i>	Stag's Tongue
<i>Elaphoglossum paleaceum</i>	N/A
<i>Elaphoglossum wawrae</i>	Ekaha, Laukahi-nunui
<i>Freycinetia arborea</i>	Ie'ie
<i>Grammtis hookeri</i>	Maku'e-Lau-Li'i
<i>Grammtis tenella</i>	Kolokolo
<i>Hedyotis centranthoides</i>	N/A
<i>Hedyotis terminalis</i>	Manono
<i>Huperziaserrata</i>	Wawae'iole
<i>Ilex anomala</i>	Kawa'u
<i>Korthalsella (sp?)</i>	Hawaiian Mistletoe
<i>Labordia hedyosmifolia</i>	Kamakahala
<i>Lycopodiella cernua</i>	Wawae'iole
<i>Lycopodiella venustulum</i>	Wawae'iole
<i>Machaerina angustifolia</i>	Uki
<i>Marratia douglasii</i>	Pala
<i>Mecodium recurvum</i>	Ohi'a Ku
<i>Melicope clusiifolia</i>	Alani
<i>Metrosideros polymorpha</i>	Ohi'a lehua
<i>Microlepis strigosa</i>	Palapalai
<i>Myrsine lessertiana</i>	Kolea
<i>Nephrolepis cordifolia</i>	Kupukupu

Appendix 1 (cont'd). Draft Native Plant List of Kaiholena Unit

<i>Ophioderma pendulum</i> subsp. <i>Falcatum</i>	N/A
<i>Peperomia hyopleuca</i>	Ala'alawainui
<i>Peperomia membranacea</i>	Ala'alawainui
<i>Perrottetia sandwicensis</i>	Olomea
<i>Pipturus albutis</i>	Mamaki
<i>Pittosporum confertiflorum</i>	Ho'awa
<i>Pittosporum hawaiiense</i>	Ho'awa
<i>Pneumatopteris sandwicensis</i>	Ho'i'o-Kula
<i>Polypodium pellucidum</i> var. <i>pellucidum</i>	N/A
<i>Psilotum complanatum</i>	Moa
<i>Psychotria</i> (sp?)	Kopiko
<i>Sadleria cyatheoides</i>	Ama'u
<i>Scaevola chamissoniana</i>	Naupaka-Kuahiwi
<i>Selaginella arbuscula</i>	Lepelepe-A-Moa
<i>Smilax melastomifolia</i>	Hoi kuahiwi
<i>Sphaerocionium lanceolatum</i>	Palai-Hinahina
<i>Sphenomeris chinensis</i>	Pala'a
<i>Trematolobelia grandifolia</i>	N/A
<i>Vaccinium calycinum</i>	Ohelo Kala'au
<i>Vandenboshcia davallioides</i>	N/A

Appendix 2:
Rare Plants of
Ka'u Preserve
and Vicinity

